IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2-3-2007

CORAM:

THE HON'BLE MR.JUSTICE P.D.DINAKARAN,
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA
AND
THE HON'BLE MR.JUSTICE K.CHANDRU

W.P.Nos.7755, 8448, 9388 to 9396, 10683, 11679, 12044, 12075, 12427, 12643, 13205, 13209, 13451, 13465, 13474, 14428, 14484, 14496 to 14499, 14559, 15691, 15877, 15893 to 15896, 16380, 16421, 16422, 16441, 16490 to 16495, 16496 to 16500, 17089, 17158, 17184, 17765, 17953, 19652, 19685 to 19687, 20290, 20291, 20363, 20934, 20944, 21333, 21405, 21406, 22072, 22081, 22094, 22103, 22223, 22420, 22462, 22703, 23132, 23134, 23186, 23370, 24306, 24323 to 24326, 24392, 24482, 25191, 25635, 11087, 17049, 29282 to 29287, 30746, 41093, 23548 to 23550, 25123, 27055, 27399, 27400, 27471, 27841, 27897, 27915, 29436, 29485, 31890 to 31893, 32469, 33530, 33531, 35425, 36602, 36638, 39409, 40182, 40185, 41787 to 41790, 41939, 42521, 44427, 44428, 44487 of 2006; 14088 and 25767 of 2003, 23344, 23345, and 26452 of 2004, 1714, 3984, 3985, 6988, 8538, 11803, 26108, 26981, 39895 and 41008 of 2005; W.A.No.536 of 2002; and C.M.A.No.1161 and 1162 of 2004

and

W.P.M.P.Nos.349, 8545, 10378 to 10386, 12093, 13270, 13648, 13701, 13702, 14028, 14228, 16359, 14818, 14822, 14823, 15027, 15041, 15042, 15051, 15052, 15216, 15267, 15268, 15281 to 15284, 15351, 15455, 15456, 15658, 15659, 15686, 15688, 15689, 15690, 15842, 16367, 15899, 15900, 15915, 15958 to 15963, 15964, 15968, 16114, 16167, 16198, 16199, 1(WP.17765/2006), 1 (WP.17953/2006), 1 and 2 (WP.19652/2006), 2 (WP.19685/2006), 2 (WP.19686/2006), 2(WP.19687/2006), 1 (WP.20290/2006), 2(WP.No.20291/2006), 1 and 2 (WP.20934/2006), 1 and 2 (WP.20944/2006), 1 and 2(WP.21333/2006), 1(WP.21405/2006), 1(WP.21406/2006), 1 (WP.22072/2006), 1(WP.22081/2006), 1(WP.22094/2006), 1(WP.22103/2006), 1 (WP.22223/2006), 1(WP.22420/2006), 1(WP.22462/2006), 1 and 2 (WP.22703/2006), 2 (WP.23132/2006), 2(WP.23134/2006), 1(WP.23186/2006), 1(WP.23370/2006), 1 (WP.24306/2006), 1 to 1 (WP.24323 to 24326/2006), 1 and 2(WP.24392/2006), 1 (WP.24482/2006), 1 and 2(WP.25191/2006), 1(WP.25635/2006), 12652, 12653, 16072, 1 to 1 (WP.29282 to 29287/2006), 2 (WP.30746/2006), 2 and 3 (WP.41093/2006), 2 to 2(WP.23548 to 23550/2006), 1 and 2(WP.25123/2006), 1 (WP.27055/2006), 1 to 1(WP.27399 & 27400/2006), 1 and 2(WP.27471/2006), 1 (WP.27841/2006), 1(WP.27897/2006), 2 (WP.27915/2006), 1(WP.29436/2006), 1 (WP.29485/2006), 1(WP.32469/2006), 1 to 1 and 2 to 2 (WP.33530 & 33531/2006), 1 (WP.36602/2006), 1 and 2(WP.36638/2006), 1(WP.39409/2006), 2(WP.40182/2006), 1 (WP.40185/2006), 1 to 1(WP.41787 to 41790/2006), 1(WP.42521/2006), 2 to 2 (WP.31890 to 31893/2006), 1 (WP.41939/2006), 1 to 1 (WP.44427 & 44428/2006), 2 (WP.44487/2006) of 2006, 31620 and 31621 of 2003, 32312 to 32314 of 2004 1903, 4459, 4460, 7634, 9224, 12897, 28564, 29404, 29405 and 35219 of 2005, WVMP No.1321 of 2005 and 622 of 2006.

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W.P.No.7755 of 2006:

Mrs.S.Bagavathy ... Petitioner

vs.

1. State of Tamil Nadu,
   rep. By its Secretary,
   Law Department,
   Fort St. George, Chennai-9.

2. The Competent Authority,
   District Revenue Officer,
   Madurai.

... Respondents

W.P. filed under Article 226 of the Constitution of India for the issue of a writ of declaration declaring that the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 as unconstitutional and ultra vires.

WP.No.8448/2006:

M.Vasudevan ..Petitioner.

-Vs-

1. The Competent Authority and
Commissioner of Land Administration,
Chennai.

2. The District Collector, Dindigul.

3. The Revenue Divisional Officer, Dindigul.

4. State Rep. By
The Deputy Superintending of Police,
Economic Offences Wing II,
Dindigul, Dindigul District,
[Crime NO.1 of 2005]. ..Respondents.

WP.No.9388 of 2006 to WP.9396 of 2006:

BSR Group of Companies, rep. By
Mrs.S.Bagavathy. ..Petitioner.

-Vs-

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1. State of Tamil Nadu,
rep. By its Secretary,
Law Department, Chennai.

2. The Competent Authority,
District Revenue Officer,
Madurai. ..Respondents.

WP.No.10683 of 2006:

C.Sumathy ..Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary,
Home Department, Chennai -9.

2. The Competent Authority and Special
Commissioner of Commissioner of Land Administration,
Chennai.

3. The Federation of Investors Association,
rep. by Mr.D.Ramamoorthy
(impleaded as per order of Court
dated 13.04.2006 in WP.No.17872/06) Respondents

WP.No.11679 of 2006

K.Vadivelu Petitioner

vs

1. The Competent Authority under the Tamil Nadu
Protection of Interest of Depositions
(in financial establishments) Act 1997
and District Revenue Officer, Chennai.

2. The Inspector of Police,
Central Crime Branch,
O/O Commissioner of Police,
re allotted as EOW,
Government Estate, Chennai 2. Respondents

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WP.12044 OF 2006:

N.Ashok ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9. ..Respondents.

WP.12075 of 2006:

N.Ashok ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer,
Collectorate, Coimbatore 641 018. ..Respondents.

WP.No.12427 of 2006:

M.P.Swaminathan ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Sub Inspector of Police,
E.O.W. II, Coimbatore. ..Respondents.

WP.12643/2006:

G.V.Mohandoss ..Petitioner.

-Vs-

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1. State of Tamil Nadu,
rep. By its Secretary,
Law Department,
Fort St. George,Chennai 9.

2. The Competent Authority cum
District Revenue Officer,
Madurai. ..Respondents.

WP.No.13205 OF 2006:

1. Mr.M.Sasidharan
2. Mrs.S.Padmaja ..Petitioner.

-Vs-

1. The Principal Secretary to Government, Secretariate, Home [Courts IIA] Department, Government of Tamil Nadu, Fort St. George, Chennai 9.

2. The Inspector General of Police,
Registration, Economic Offences Wing II, Chennai 2.

3. The Competent Authority and District Revenue Officer, Chennai.

4. The Spl. Public Prosecutor,
Special Court of Tamil Nadu,
Protection of Interests of Deposits Act 1997 Chennai 104.

5. Deputy Superintendent of Police,
E.O.W II, Chennai 2. ..Respondents.

WP.No.13209 OF 2006:

Mr.A.Muthuvel ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer, Dindigul.

3. The Inspector of Police,
E.O.W.II, Dindigul. ..Respondents.

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WP.No.13451 of 2006:

D.Selvaraj ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Sub Inspector of Police,
E.O.W.II, Coimbatore. ..Respondents.

WP.No.13465 of 2006

P.Murugesan ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
EOW.II, Tiruchi.

3. The Competent Authority,
District Revenue Officer,
Trichy. ..Respondents.

WP.No.13474 of 2004:

K.L.Subramaniam ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and District Revenue Officer,
Madurai.

4. The Inspector of Police,
EOW, Madurai. ..Respondents.

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WP.14428 OF 2006:

A.N.Venkatesan ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Law Department,
Fort St. George,Chennai 9.

2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Home Department,
Fort St. George,Chennai 9.

3. The Competent Authority and District Revenue Officer,
Kancheepuram District, Kancheepuram.

4. The Inspector of Police,
EOW, Kancheepuram. ..Respondents.

WP.No.14484 of 2006:

N.R.Sudaguran ..Petitioner.

-Vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and District Revenue Officer,
Coimbatore.

3. The Inspector of Police,
EOW.II, Coimbatore. ..Respondents.

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WP.No.14496 to 14499 of 2006:

V.Bharathi ..Petitioner in WP.14496 and 14498/06.
S.Thilaka ..Petitioner in WP.14497 and 14499/06.

-Vs-

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1. The Secretary to the Government
of Tamil Nadu,
Home [Courts II A] Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
District Crime Branch,
[EOW.II], Theni. ..Respondents in WP.14496 to 14499/06.

WP.14559 of 2006:

P.Vadivel ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary to Government,
Home Department,
Fort St. George,Chennai 9.

2. The Sub Inspector of Police,
EOW.II, Coimbatore. ..Respondents.

WP.15691 OF 2006

T.Chandrasekar ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer,

3. The Inspector of Police,
EOW.II, Cuddalore. ..Respondents.

WP.No.15877/2006:

Vetrivel ..Petitioner.

-Vs-

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1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
EOW.II, Cuddalore. ..Respondents.

WP.15893 of 2006 to 15896 of 2006

1.N.K.Rajagopal
2.R.Rajeswari
3.R.Rajakum ..Petitioner in WP.15893/06, 15894/06.

B.Alaguvaralakshmi ..Petitioner in WP.15895, 15896/06.

-Vs-

1. The Secretary to the Government of Tamil Nadu,
Home [Court II A] Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
District Crime Branch, [EOW.II],
Theni. ..Respondents 1 and 2 in WP.15893 and 15894 and 15895/06, 15896/06.

3. Federation of Investors Associates,
Rep. by its Secretary,
Mr.D.Ramamoorthy. ..3rd Respondent in WP.15895/06.

WP.No.16380 of 2006

Mrs.Parimalam ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Law Department,
Fort St. George,Chennai 9.

2. The Competent Authority
District Revenue Officer,
Coimbatore. ..Respondents.

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WP.No.16421 and 16422/2006:

B.Saraswathi ..Petitioner in WP.16421/2006, 16422/2006

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home [Courts II A] Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
District Crime Branch,
[EOW.II]. ..Respondents.

WP.No.16441 OF 2006

M.Karupusamy ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Law Department,
Fort St. George,Chennai 9.

2. The Competent Authority,
District Revenue Officer,
Trichi. ..Respondents.

WP.16490 TO 16500 OF 2006:

Mariyan ..Petitioner in all WPs.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

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2. The Sub Inspector of Police,
EOW.II, Coimbatore. ..Respondents in all WPs.

WP.17089 OF 2006 and 17158 of 2006

S.Kumaraswamy ..Petitioner in WP.17089/06.

R.P.Kanagaraj ..Petitioner in WP.17158/06.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
EOW.II, Coimbatore. ..Respondents.

WP.17184 of 2006:

T.Gunasekaran ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority
and District Revenue Officer,
Coimbatore.

3. The Sub Inspector of Police,
EOW.II, Coimbatore. ..Respondents.

WP.No.17765 of 2006:

T.S.S.Elangovan ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
[Courts II A] Department,
rep. by its Secretary, chennai.

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2. The Inspector of Police,
EOW.II, Madurai. ..Respondents.

WP.No.17953 of 2006

K.C.Arumugam ..Petitioner.

-Vs-

State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9. ..Respondents.

WP.19652 of 2006

N.V.Rangarajan ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority
and District Revenue Officer,
Coimbatore.

3. The Inspector of Police,
EOW.II, Chennai. ..Respondents.

WP.19685 OF 2006 TO 19687 / 2006.

1. Sabitha Spinners rep. by its
Managing Partner
V.Ramanujam.

2. Ramanujan

3. Narayanasamy

4. Kamalam
5. Indrani
6. Mohan @ Mohankumar ..Petitioners.

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-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
Spl. Commissioner and Commissioner of Land Administration
Chennai 5.

3. The Inspector of Police,
EOW.II, Coimbatore. ..Respondents.

WP.No.20290 and 20291 of 2006:

Deivasigamani @ Safia Tailor ..Petitioner in 20290, 20291/06.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Sub Inspector of Police,
EOW.II, Coimbatore. ..Respondents in both WPs.

WP.20363 of 2006:

1. Raja
2. R.L.Kennedy ..Petitioners.

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government
Home [Courts] Department,
Fort St. George, Chennai.

2. The Competent Authority and
District Revenue Officer,
Coimbatore.

3. The Inspector General of Police,
EOW, Chennai. ..Respondents.

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WP.20934 OF 2006

M.Rajendra Babu ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority/Land Commissioner,
Ezhilagam, Chennai.

3. District Revenue Officer,
Collector Officer, Chennai.

4. The Deputy Superintendent of Police
EOW.II, Chennai. ..Respondents.

WP.No.20944 of 2006

R.Sundaram Petitioner

vs

1. The State of Tamil Nadu
rep. by its Secretary,
Home Department, Fort St,George,
Chennai 9.

2. The Competent Authority and
District Revenue Officer,
Collectorate, Coimbatore. Respondents

WP.No.21333 of 2006

Premraj Jain ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

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2. The Competent Authority/
Land Commissioner,
Ezhilagam, Chennai.

3. The District Revenue Officer,
Collector Office, Vellore.

4. The Deputy Superintendent of Police,
EOW II, Vellore District ..Respondents.

WP.21405 AND 21406 OF 2006:

Mr.S.Ramu ..Petitioner in WP.21405/06
N.Kandasamy ..Petitioner in WP.21406/06

-Vs-

1. The Secretary,
Home Department,
Government of Tamil Nadu,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer,
Collectorate, Coimbatore. Respondents in both the WPs

WP.No.22072/2006 & 22081 of 2006 & 22094/06 & 22103/06

U.Vellaichamy Petitioner in WP.22072/06, 22103/06
P.Srinivasan Petitioner in WP.22081/06 & WP.22094/06

vs

1. The Secretary
Home Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.

2. The Inspector of Police,
District Crime Branch
EOW.II, Theni District Respondents in WP.22072, 22081, 22094/06, 22103/06

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WP.22223 of 2006

O.A.A.Anantha Padmanaban Chettiar ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer,
Collectorate, Coimbatore 641 018.

3. Inspector General of Police,
EOW.II, Chennai. ..Respondents.

WP.22420 of 2006 and WP.22462/06:

S.Bhupathi ..Petitioner in both WPs.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer,
Collectorate, Coimbatore 641 018. ..Respondents in both WPs.

WP.No.22703 of 2006:

Dhanapriya Investments [India] Ltd.,
Rep. by its Managing Director,
Duraimani. ..Petitioner.

-Vs-

1. The Secretary to Government of Tamil Naud,
Home [Courts II A Department],
Fort St. George, Chennai 9.

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2. Inspector of Police,
EOW, Chennai 600 002. ..Respondents.

WP.23132 of 2006 and 23134/2006

1. S.Lavanya
2. A.Sukumar ..Petitioners in WP.23132/06.

1. P.Ramadevi
2. A.Pasupathi ..Petitioner in WP.23134/06.

-Vs-

1. Government of Tamil Nadu,
rep. by its Secretary,
Home [Court II A] Department,
Fort St. George, Chennai 9.

2. District Collector, Salem.

3. Revenue Divisional Officer,
Salem District at Salem.

4. Inspector of Police,
EOW, Salem. ..Respondents in both WPs.

WP.23186/2006:

K.R.Sudarsan ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
EOW.II, Madurai. ..Respondents.

WP.23370/2006:

M.Palanisamy ..Petitioner.

-Vs-

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1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Competent Authority and
District Revenue Officer,
Coimbatore.

3. The Inspector of Police,
EOW.II, Coimbatore. ..Respondents.

WP.24306 of 2006

R.Balakrishnan ..Petitioner.

-Vs-

1. State of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Fort St. George, Chennai 9.

2. The Deputy Superintendent of Police,
Economic Offences Wing II,
Trichy. ..Respondents

WP.24323 to 24326 of 2006:

S.Kamalam ..Petitioner in all WP.

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Fort St. George,
Chennai 9.

2. The Inspector of Police,
Economic Offences Wing II,
Salem. ..Respondents in all WPs.

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WP.No.24392 of 2006:

K.Varadarajan ..Petitioner.

-Vs-

1. State of Tamil Nadu,
Rep. by the Secretary to Government,
Home Department, Chennai 9.

2. The Special Judge under the TNPID [INFES]Act 1997,
City Civil Court Buildings Annexure,
Chennai 600 104. CC.No.100 of 2001.

3. The Deputy Superintendent of Police,
EOW.II, Kancheepuram.

4. M/s.Sri Malola Investment and Finance Corporation,
Rep. by its Managing Partner, K.Vasudevan.

5. M/s.Malola Finance,
Rep. by Managing Partner,
K.Vasudevan ..Respondents.

WP.24482/2006:

J.K.Jawarappa @ Selvaraj ..Petitioner.

-Vs-

1. The State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

2. The Inspector of Police,
EOW.II, Udhagai, The Nilgiris District. ..Respondents.

WP.No.25191 of 2006:-

T. Easwara Murthy ....Petitioner

vs

1. State of Tamil Nadu rep by its Secretary,
Home Department Fort St George, Chennai 9.

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2. The Competent Authority &
The District Revenue officer,
Kanyakumari District at Nagarcoil.

3. State rep by The Deputy Superintendent of
Police E.O.W II,
Kanyakumari District at Nagercoil. ....Respondents

WP.No.25635 of 2006:-

M/s. Andavar Finance Company,
rep by its Managing Partner V. Ramachandran ....Petitioner

vs

1. The State of Tamil Nadu rep by its Secretary,
Home (Court II A) Department
Fort St George, Chennai 9.

2. The Special Court Constituted for the offence
under T.N, Protection of Interest of Depositors
(In Financial establishments) Act,
High Court Campus, Chennai 104.

3. The Competent Authority &
The District Revenue officer,
Coimbatore. ....Respondents

WP.No.11087 of 2006:-

1. Kandasamy
2. Kavitha ....Petitioner

vs

1. The State of Tamil Nadu rep by its Secretary,
Home Department
Fort St George, Chennai 9.

2. The Competent Authority &
Spl Commissioner and Commissioner of
Land Administration, Chennai. ....Respondents

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WP.No.17049 of 2006:-

M. Dharmaraj ....Petitioner

vs

1. The State of Tamil Nadu rep by its Secretary,
Home Department
Fort St George, Chennai 9.

2. The Inspector of Police,
EOW.II, Coimbatore.

WP.Nos.29282 to 29287 of 2006:-

P. Satyanarayanan ....Petitioner in all WPs

vs

1. The State of Tamil Nadu rep by its Secretary,
Home Department
Fort St George, Chennai 9.

2. The Inspector of Police,
EOW.II, Chennai. ...Respondents in all WPs

WP.No.30746 of 2006:-

S. Saravanan ....Petitioner

vs

1. The State of Tamil Nadu rep by its Secretary,
Home (Court II A) Department
Fort St George, Chennai 9.

2. The Inspector of Police,
District Crime Branch (EOW.II)
Theni. ...Respondents

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WP.No.41093 of 2006:-

1. Sathiadas
2. Tmt. Laila Christabel ....Petitioners

vs

1. The State of Tamil Nadu rep by its Secretary,
Home Department
Fort St George, Chennai 9.

2. The Competent Authority &
The District Revenue officer,
Kanyakumari District at Nagarcoil.1.

3. State rep by The Inspector of
Police E.O.W II,
Kanyakumari District.

4. M/s. Human Awareness Society
(Regn No. 10/2006) rep by its
Secretary, Mr. J. blessed Singh,
(R4 impleaded as per order dated
23.11.2006 by PDDJ, PPS JJ & KCJ
in MP.4/06 in WP.41093/06) ...Respondents

WP.No.23548 to 23550 of 2006:-

1. Mr. A. K. Suresh Kumar
2. Mrs. Amsaveni
3. Mr. C. Arunsivam
4. Mrs. Logammal ....Petitioners

vs

1. The State of Tamil Nadu rep by its Secretary to Government,
Law Department, Fort St George, Chennai 9.

2. The State of Tamil Nadu rep by its Secretary to Government
Home Department, Fort St George, Chennai 9.

3. The Competent Authority &
The District Revenue officer,
Coimbatore District at Coimbatore. ....Respondents.

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WP.No.25123 of 2006:-

T. Lakshmi ....Petitioner

vs

1. State of Tamil Nadu rep by its Secretary
Home Department, Fort St George, Chennai 9.

2. The Competent Authority/Land Commissioner,
Collector Office, Vellore.

3.The Inspector of Police
E.O.W II,
Vellore. ....Respondents.

WP.No.27055 of 2006:-

A. C. Palanisamy ....Petitioner

vs

1. The State of Tamil Nadu rep by its Secretary
Home Department, Fort St George, Chennai 9.

2. The Deputy Superintendent of Police,
EOW.II. Coimbatore.

3. The Authorised officers,
Revenue Divisional Officer,
Coimbatore. ....Respondents.

WP.No.27399 & 27400 of 2006:-

Natesan ....Petitioner

vs

1. The Secretary to Government
Home Department, Fort St George, Chennai 9.

2. The Special Court Constituted for
Offences Under Tamil Nadu Protection of Interest of
Depositors (In Financial Establishments Act)

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3. The Deputy Superintendent of Police,
EOW.II. Chennai.

4. Thiru. M. Ravindran. ....Respondents.

WP.No.27471 of 2006:-

K. Palanisamy ....Petitioner

vs

1. The State of Tamil Nadu,
rep by its Secretary
Home Department, Fort St George, Chennai 9.

2. The Competent Authority (Under TNPID Act)
District Revenue officer,
Erode District Erode.

3. The Inspector of Police,
EOW II, Erode. ....Respondents.

WP.No.27841 of 2006:-

P. Krishnaswamy ....Petitioner

vs

1. The State of Tamil Nadu,
rep by its Secretary
Home Department, Fort St George, Chennai 9.

2. The Competent Authority and
District Revenue officer,
Collectorate, Coimbatore 641018 ....Respondents.

WP.No.27897 of 2006:-

B. Santhi @ Santhi Devi ....Petitioner

vs

1. The State of Tamil Nadu,
rep by its Secretary
Home Department, Fort St George, Chennai 9.

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2. The Inspector of Police,
Economic Office Wing,
Manjakuppam, Cuddalore District ....Respondents.

WP.No.27915 of 2006:-

1. Sri Lakshmi Ganpathi Real Estate,
2. V. Dhayalamurthy, ...Petitioners

vs

1. The State of Tamil Nadu,
rep by its Secretary
Law Department, Fort St George, Chennai 8.

2. The Competent Authority and
District Revenue officer,
Coimbatore ....Respondents.

WP.No.29436 of 2006:-

K. Sasikumar ....Petitioner

vs

1. The State of Tamil Nadu,
rep by its Secretary
Law Department, Fort St George, Chennai 9.

2. The Competent Authority and
District Revenue officer,
Trichy. ....Respondents.

WP.No.29485 of 2006:-

P. Rengasamy ....Petitioner

vs

1. State of Tamil Nadu,
rep by its Secretary
Home Department, Fort St George, Chennai 9.

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2. The Inpector of Police,
EOW.II, Karur. ....Respondents.

WP.No.31890 to 31893 of 2006:-

1. Maruthi Bearing Centre,
rep by V. V. Ramamoorthy, ...1st Petitioner in WP.No.31890/06

2. V. V. Ramamoorthy ....2nd Petitioner in
WP.No.31890,31891, 31892 /06

Jay Marthi Bearing (P) Ltd.,
rep by V. V. Ramamoorthy 1st Petitioner in WP.31891/06

V.V. R. Bearings
Rep by V. V. Ramamurthy 1st Petitioner in WP.31892/06

Maruthi Auto parts,
rep by V. V. Ramamorthy 1st Petitioner in WP.31893/06

vs

1. State of Tamil Nadu,
rep by its Secretary
Law Department, Fort St George, Chennai 9.

2. The Competent Authority and
District Revenue officer,
Trichy. ....Respondents in all WPs.

WP.No.32469 of 2006:-

P. Ravindran ....Petitioner

vs

1. The Inspector of Police,
Economic Offiences Wing II, Chennai 2.

2. The Competent Authority and
District Revenue officer,
Salem District, Salem.

3. The Superintenent of Police,
Salem District Salem. ....Respondents.

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WP.No.33530 & 33531 of 2006:-

Smt.R. Geetha ....Petitioner in 33530/06
M. Ravichandran ....Petitioner in 33531/06

vs

1. State of Tamil Nadu,
rep by its Secretary to Government,
Home Department, Fort St George, Chennai 9.

2. The Spl Judge under the TNPID (INF.ES) Act 1997
City Civil Court Buildings Annexe,
Chennai 104 - C.C.No. 129 of 2004.

3. The Inpector of Police,
EOW.II, Vellore District. ....Respondents in both WPs

WP.No.35425 of 2006 & 36638 of 2006:-

Y. Hollis ...Petitioner

Vs

1. State of Tamil Nadu,
rep by its Secretary to Government,
Home Department, Secretraite Chennai 9.

2. The Spl Judge under the TNPID (INFSS) Act 1997
City Civil Court Buildings Annexe,
Chennai 104 - C.C.No. 460 of 2006.

3. The Deputy Superintendent of Police,
EOW.II, Nagarcoil, Kanyakumari. ....Respondents

WP.No.36602 of 2006

Mary Gnanathangam ...Petitioner

Vs

1. State of Tamil Nadu,
rep by its Secretary,
Home Department, Chennai 9.

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2. The Competent Authority and
District Revenue officer,
Nagercoil, Kanyakumari District.

3. The Sub Inspector of Police,
EOW.II, Nagaercoil, Kanyakumari ....Respondents

WP.No.39409 of 2006 & 41939/06 & 42521/06

Kalish Prema @ Nalini ...Petitioner in WP.39409/06
Mary Ivin, ...Petitioner in WP.41939/06
K. Ragavan ...Petitioner in WP.42521/06

Vs

1. State of Tamil Nadu,
rep by its Secretary for
Home Department, Fort St George,
Chennai 9.

2. The Addl Director General of Police,
EOW.II, Admiralty House, Govt Estate,
Chennai 2.

3. The Inspector of Police,
EOW.II, Nagaercoil, Kanyakumari District ....Respondents
in all WPs.

WP.No.40182 of 2006

1. A. S. Finance and Investments
rep by Arumugam

2. Arumugam ..Petitioners

Vs

1. State of Tamil Nadu,
rep by its Secretary,
Law Department, Fort St George Chennai 9.

2. The Competent Authority and
District Revenue officer,
Erode District. ....Respondents

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WP.No.40185 of 2006

R. John Christopher ...Petitioner

Vs

1. The State of Tamil Nadu,
rep by its Secretary,
Home Department, Fort St George Chennai 9.

2. The Competent Authority and
District Revenue officer,
Kanyakumari District at Nagercoil

3. The Inspector of Police,
EOW, Nagaercoil, Kanyakumari District ....Respondents

WP.No.41787 to 41790 of 2006

M. Sekar ...Petitioner in all WPs

Vs

1. The State of Tamil Nadu,
rep by its Secretary,
Home Department, Fort St George Chennai 9.

2. The District Superintendent
of Police, District Crime Branch,
Karur. ....Respondents in all WPs

WP.No.44427 & 44428 of 2006

Sundararaj ...Petitioner in WP.44427/06
Sekhar ...Petitioner in WP.44428/06

Vs

1. The State of Tamil Nadu,
rep by its Secretary for
Home Department, Fort St George Chennai 9.

2. The Competent Authority and
Spl Commissioner & Commissioner
of Land Administration Chepauk, Chennai 5. ...Respondents both WPs

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WP.No.44487 of 2006

1. R. Subramanian
2. Mrs. Anbuselvi ...Petitioners

Vs

The Deputy Superintendent of Police,
EOW.II, Trichy.

WP.No.14088 of 2003

M/s. Andavar Finance
rep by its Managing partner,
Mr. V. Ramachandran ...Petitioner

Vs

1. The Secretary to the Government
Home Department, Fort St George Chennai 9.

2. The Competent Authority and
Spl Commissioner for Land Administration
Chepauk, Chennai

3. The Inspector of Police
EOW,II, Govt Estate, Chennai. ...Respondents

WP.No.25767 of 2003

A. Pasupathy ...Petitioner

Vs

1. Government of Tamil Nadu,
rep by its Secretary
Home (Courts II A) Department,
Fort St George Chennai 9.

2. The Addl Commissioner/ Competent Authority
(Cinema & Irrigation) Land Administration Department
Chepauk, Chennai 5.

3. The District Collector,
Salem District Salem.

4. The Revenue Divisional Officer,
Salem 636 001. ...Respondents

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WP.No.23344 & 23345 of 2004

1. Thirumara Chellapandi @ Thirumari Chellapandi

2. Murasolimaran

3. Manikandan ...Petitioners in WP.23344/04

R. Mani ...Petitioner in WP.23345/04

Vs

State rep by its Secretary
Home (Courts II A) Department,
Govt of Tamil Nadu, Chennai 9. ..Respondents in both case.

WP.No.26542 of 2004

S. Bhuvaneshwaran ...Petitioner

Vs

1.The Secretary to Govt
Home Department,
Fort St George Chennai 9.

2. The Deputy Superintendent of Police,
Office of the Economic Offences,
Wing II, head Quarters,
Chennai 2.

3. The District Registrar,
Registration Department,
Pondicherry.

4. The Sub Registrar,
Oulgaret, Pondicherry. ...Respondents

WP.No.17140 of 2005

S. Radhakrishan ...Petitioner

Vs

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1.The Secretary to Govt
Home Department (Courts II A)
Fort St George Chennai 9.

2. The Competent Authority and the Addl Commissioner
(Cinema & Irrigation) of Land Administration,
Chepauk, Chennai 5.

3. The Deputy Superintendent of Police,
EOW II, Nagercoil, KK District

4. The District Collector,
Kanyakumari District, Nagercoil. ..Respondents

WP.No.3984 & 3985 of 2005

1. S. Rajamanickam
2. R. Savithri
3. K. Chandrasekaran
4. A. Vijayarangan
5. S. Gokila
6. D. Venkatesan ...Petitioners in WP 3984/05

1. M. G. Gunasekaran
2. G. Rajeswari
3. S,. Sadasivam
4. K. N. Kanagasabapathi
5. P. Venkataachalam
6. K. Ganeshsankar
7. G. Rajeswari
8. C. Pushpa
9. B. Leela
10. D. Mallika
11. Ms. R. Sindoori (Minor)
12. Ms. R. Abinaya (Minor)
13. V. Vanithamani
14. V. Vasanthi ...Petitioners in WP 3985/05

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
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Vs

1.The Govt of Tamil Nadu, rep by
Secretary Home Department Chennai 9.

2. The Competent Authority, the Commissioner of Land Administration, Chepauk, Chennai 5.

https://hcservices.ecourts.gov.in/hcservices/

3. The District Revenue Officer,
Coimbatore. ...Respondents

WP.No.6988 of 2005:-

V. S. Chinnakittusamy ....Petitioner

vs

1. The Government of Tamil Nadu rep by its Secretary,
Home Department Fort St George, Chennai 9.

2. The Competent Authority &
District Revenue officer,
Coimbatore.

3. The Inspector of Police
E.O.W II,
Coimbatore. ....Respondents

WP.No.8538 of 2005:-

P. Kannan ....Petitioner

vs

1. The State of Tamil nadu,
rep by its Secretary to Government,
Home Department Fort St George, Chennai 9.

2. The Superintendent of Police,
EOW Govt Estate,
Chepauk Chennai 5. ....Respondents

WP.No.11803 of 2005:-

R. Jothi ....Petitioner

vs

1. The Government of Tamil Nadu rep by Principal Secretary to
Home (Court 2A) Department
Chennai 9.

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2. The Competent Authority &
District Revenue officer,
Cuddalore District,
Cuddalore.

3. The Inspector of Police
E.O.W II,
Cuddalore.

4. M. Rajkumar

6. T. Kalidhasan ....Respondents

WP.No.26108 of 2005:-

K. K. Baskaran ....Petitioner

vs

1. The Government of Tamil Nadu
rep by its Secretary
Home (Courts IIA) Department
Fort St George, Chennai 9.

2. The Commissioner of Land Administration,
Chepauk, Chennai 5.

3. The Inspector General of Police
E.O.W II, Chennai 2. ....Respondents

WP.26981 of 2005

N.Kanagasabai Petitioner

vs

1. State of Tamil Nadu,
rep. by Secretary to Government,
Law Department,
Fort St.George, Chennai - 9.

2. State of Tamil Nadu
rep. by Secretary to Government,
Home Department
Fort St.George, Chennai -9.

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3. The Inspector General of Police,
E.O.W.II Chennai.

4. The District Revenue Officer,
(The Competent Authority under
TNPID Act 1997) Cuddalore District
Cuddalore. Respondents

WP.39895 of 2005

N.P.Kavunde Gounder Petitioner

vs

1. The State of Tamil Nadu,
rep by its Secretary to Government,
Law Department, Fort St.George, Chennai - 9.

2. State of Tamil Nadu rep by its Secretary,
Government Home Department, Fort St.Georege,
Chennai - 9.

3. The Competent Authority and
District Revenue Officer,
Coimbatore- 18.

4. The Inspector of Police,
E.O.W.Coimbatore,

5. Federation of Investors Association
rep. by its Secretary,
Mr.D.Ramamoorthy
(R5 impleased as per court dated 13.09.2006
in WPMP.17870/06, PDDJ, PPSJJ) Respondents

WP.41008 of 2005

Madurai Arasamaram Isai
Ilakkiya Sangam rep. by its
Secretary. Petitioner

vs

1. The Secretary to Government
Home Department, Fort St.George, Chennai -9.

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2. The District Revenue Officer,
Madurai (Competetent Authority
under T.N.P.I.D Act) Madurai

3. The Deputy Superintendent of Police,
E.O.W.II, Madruai Respondents

WA.536 of 2002

Maruthi finance rep by its
Partner M.Mukundan Appellant

vs

1. State of Tamil Nadu,
rep. by its Secretary to Government
Law Department, Chennai - 9.

2. Deputy Superintendent of Police,
E.O.W.II, Chengai District
Chennai Respondents

CMA.1161 & 1162 of 2004

Kamala Petitioner in CMA.1161/2004
Rathankumar Petitioner in CMA.1162/04

vs

1. The State of Tamil Nadu,
rep by its Secretary,
Home Department, Chennai

2. The Competent Authority and
Special Commissioner and
Commissioner of Land Administration
Chepauk, Chennai - 5 Respondents in both CMA's

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Mr.M.Ravindran For Petitioner in
Senior Counsel WP.10683 of 2006

For Mr.A.Murugaiya For Petitioner in
For Mr.B.Manoharan WP.11087 of 2006

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V.K.Muthusamy Senior Counsel For Mr.P.Mathivanan	For Petitioner in WP.12044 & 12075/06
Mr.S.Xavier Felix	For Petitioner in WP.7755/06, 9388/06 to 9396/06 12643/06, 16380/06, 16441/06 27915/06, 29436/06, 40182/06, 31890/06
Mrs.S.Ayyathurai	WP.26981/05, 27897/06
Sai Bharath Ilan	WP.39895/05, 14428/06
R.Loganathan	WP.11679/06
R.Rajan	WP.12427/06
P.Rajamanickam	WP.13209/06, 13465/06 13474/06, 14484/06, 15691/06 23186/06, 17049/06, 29282/06 to 29287/06, 41008/05
V.Meenakshi Sundaram	WP.13451/06
J.Pothiraj	WP.14496/06 to 14499/06, 15893/06 to 15896/06, 16421/06
K.Kalyanasundaram	WP.14559/06, 15877/06, 16490/06 to16495/06 to 16500/06, 17158/06, 17184/06
H.Rajasekar	WP.17089/06, 24323/06 to 24326/06.
M.S.Ramesh	WP.17765/06
L.P.Shanmugasundram	WP.17953/06
G.D.Vaishnav	WP.19652/06
R.Bharath Kumar	WP.19685/06 to 19687/06
A.Prabhakaran	WP.20290/06 & 20291/06, 27055/06
Radha Gopalan	WP.20363/06
D.Rajagopal	WP.20934/06, 21333/06, 25123/06
M.Venkateswaran	WP.20944/06, 22420/06, 22462/06
T.S.Sivagnanam	WP.21405/06 & 21406/06, 27841/06
K.Anbarasan	WP.22072/06, 22081/06, 22094/06, 22103/06
A.L.Ganthimathi	WP.22223/06
R.Balasubramanian	WP.22703/06

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N.Damodaran	WP.23132/06, 23134/06, 25767/03
G.Ethirajulu	WP.23370/06
P.M.Duraiswamy	WP.24306/06
Sathish Parasaran	WP.24392/06
G.Sugadev Rajaguru	WP.24482/06
M.Vivekananda Murthi	WP.25191/06, 41093/06
S.P.L.Palaniappa	WP.25635/06
V.P.Raju	WP.30746/06
S.James	WP.23548/06 to 23550/06
L.G.Sahadevan	WP.27399/06, 27400/06
D.Selvaraju	WP.27471/06, 29485/06
A.K.Mylsamy	WP.32469/06
M.Kempraj	WP.33530/06 & 33531/06
K.Pandian	WP.36602/06
G.Sarvanakumar	WP.36638/06, 35425/06
M.A.R.Pragash	WP.39409/06, 41939/06
K.Ravichandrabaabu	WP.40185/06
K.Rajasekaran	WP.41787/06 to 41790/06
S.Wilfred Prakash	WP.42521/06
S.N.Amarnath	WA.536/02
S.Balasubramanian	CMA.1161/04 & 1162/04
S.Kadarkarai	WP.14088/06
B.S.Gnanadesikan	WP.23344 & 23345/04
V.Viswanathan	WP.26542/06
A.N.Rajan	WP.1714/05
K.M.Sukader	WP.3984 & 3985/05
SU.Srinivasan	WP.6988/05

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M/S.La Law	WP.8538/05
K.A.Ravindran	WP.11803/05
M/S.Anand & Suryas	WP.26108/05
Dr.G.Krishnamurthy	WP.8448/06
P.Deenadayalan	WP.13205/06
M/S.Sarvabhauman Associates	WP.44427 & 44428/06
F.X.A.F.Denny	WP.44487/06

FOR RESPONDENTS

Mr.P.K.Rajagopal	For impleadeing Party in WP.39895/05 For 6th Respondent in WP.10683/06 For 5th Respondent in WP.20934/06 For 3rd Respondent in WP.15895/06
Mr.S.Ayyadurai	WP.27897/06 & 36777/06
Mr.M.Muthusamy	For 4th Respondent in WP.41093/04
Mrs.S.Hemalatha	For 5th Respondent in WP.19672/06
Mr.R.Viduthalai Advocate General assisted by Mr.D.Srinivasan Government Advocate	For State Government

Writ Petitions presented under Article 226 of the Constitution of India to issue Writs of

(I) Certiorari, calling for the records (i) in FIR 1/05 dated 18.03.2005 on the file of the 4th respondent (in WP.8448/06)

(ii) of the 1st respondent and quash the G.O.Ms.No.224 dated 16.03.2006 (in (WP.No.32469/06)

(iii) from the file of the respondent in G.O.Ms.No.871, Home (Courts II-A) Department dated 14.06.2004 and quash the same (in WP.Nos.23344 & 23345/04)

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(iv) in G.O.Ms.No.1055 (Home Courts IIA) Department dated 27.08.2004 on the file of the Secretary to Government, Home Department, the 1st respondent herein and qaush the same (in WP.No.1714/05)

(v) G.O.Ms.No.40(Home Courts IIA) Department dated 13.01.2005 with regard to the petitioner's property siutate in S.F.No.391/2A, SF.No.391/2B and SF.No.391/2A, SF.No.391/2B and SF.No.719 at Kuanpalayam Village, Coimbatore and quash the same (in WP.6988/05)

(v) of G.O.Ms.No.979 dated 05.10.2001 on the file of the first respondent all further connection records and quash the same (in WP.No.41008/05)

II Declaration :

(i) declaring that the Tamilnadu Protection of interest of Depositors in Financial establishments Act 1997 (TN Act 44/07 as unconstitutional and ultravires (in WP.Nos.9388 to 9396, 10683/06, 12044, 12075, 12427/06, 12643/06, 13209, 13451, 13465/06, 13474, 14484/06, 14496 to 14499, 14559/06, 15691/06, 15877, 15893 to 15896/06, 16380/06, 16421, 16422/2006, 16441/06, 16490 to 16495/2006, 16496 to 16500/06, 17089/06, 17158/06, 17184/06, 17765/06, 17953/06, 19652/06, 19685 to 19687/06, 20290 & 20291/06, 20363/06, 20934/06, 20944/06, 21333/06, 21405 & 21406/06, 22072/06, 22081/06, 22094/06, 22103/06, 22223, 22420/2006, 22462/06, 22703/06, 23132/06, 23134, 23186/06, 23370/06, 24306/06, 24323 to 24326/06, 24392/06, 24482/06, 25191/06, 25635/06, 11087/06, 17049/06, 29282 to 29287/06, 30746/06, 41093/06, 23548 to 23550/06, 25123/06, 27055/06, 27399 & 27400/06, 27471/06, 27841/06, 27897/06, 29436/06, 33530 , 33531/06, 36602/06, 41787/09 to 41790/06, 39469/06, 40185/06, 41939/06, 42521/06, 44427 & 44428/06 & 39895/05.

(ii) declaring that the Tamil Nadu Protection of interest of Depositors in Financial Establishments Act (TN Act 44/87) 1997 as unconstitutional void and ultravires

(a) and the consequential attachement proceedings and the act as ultravires (in WP.14428/06)

(b) and as amended by Tamil Nadu Protection of interest of Depositors in Financial Establishments Act 2003 (Tamil Nadu Act 30/2003 as ultravires (in WP.Nos.24392, 33530, 33531 of 2006, 35425/06, 36638/2006)

(c) and consequently set aside the proceedings in CC.No.47/06 on the file of the Spl Court constituted under the said Act (in WP.27897/06)

(2a) declaring that the TANPID (in Financial establishments) Act 1997 as uncostitutional and consequently declare the Judgment rendered by Honourable TANPID Court Chennai in CC.Nos.26/04 dated 4/2/05 (2) 20/03, 19/03, 18/03 & 21/03, respectively dated 06.09.2005 and 125/04 dated 18.08.2005 respectively as inoperative and null & void (in WP.Nos.27915/06, 31890 to 31893 of 2006) and 40182 of 2006.

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(3) declaring the amendment to Tamil Nadu protection of interest on Depositors Act, 2003, Act 30/03 as illegal and ultravires to the provisions of the constitution and inconsistant with Section 45Q, 45Q-A, 58-B, 58E of the RBI Act, 1934 and 58A(a) of the companies Act 1956 (in WP.8538/05)

(4) declaring the provision of section 3 of the TANPID (in financial establishment Act 1997 (TN Act 44/97) as ultravires of the constitution and hence unconstitutional and consequently setaside the order of the 2nd respondent made in G.O.Ms.No.575 Home Courts II A Department dated 08.07.2005 (in WP.26981/05)

III. Mandamus, forbearing the respondents from taking any further action relating to the property concerned in G.O.Ms.554 Home Court II Deparment dated 27.08.2002 without therebeing any orders of Special Judge, the Tamil Nadu Protection of Interest of Depositors (in the financial establishments) Act 44/1977 (in WP.11679/06)

(2) directing to remove the lock and handover our said property bearing S.No.175/3, A1A, A1A1A, New S.No.175/619, bearing Old No.44A, New No.20-A, and bearing Old No.45 New No.27, admeasuring 7625 1/4 square feet with superstructure measuring 2070 square feet in Vedaranyam Patnam (Third Street South wing) more fully described in the Schedule mentioned hereunder to the petitioner and (2) direct the respondent to pay to the petitioner a sum of Rs.10,00,000/- as and towards compensation for the said untold suffering and loss caused by the responden to the petitioners and cost of the petitioners (in WP.No.44487/06)

Schedule of Property (in WP.44487/06)

All that piece and parcel of land with building thereon ground bearing Old No.44A, New No.28 and bearing Old No.45 and New No.27, admeasuring 7625 1/4 Sq.Ft and superstructure measuring 2070 square feet bearing Rs.No.175/A1A1A1A1A in New S.No.175/619 Vedaranyam Patnam (Third Street South Wing) bounded on north by Third Street, South by house side belonging to Gunasekaran and others, East by backyard of house site belonging to Packirisamy Pillai and West by backyard of house site belonging to Marakittu Desikar and others (in WP.44487/06)

directing the 2nd respondent to pursue further action in accordance with the procedures laid down in Sub Section (3) and (4) of the Section (4) and Sub Section (4) of Section (6) of the Tamil Nadu Protection laid down in Sub Section (3) and (4) of the Section (4) and Sub Sectin (4) of Section (6) of the Tamil Nadu Protection of Interest of Depositors Act 1997 (Tamil Nadu Act 44/97) by prescribing in the frame (in WP.14088/03)

(3) forbearig the respondents from interferring from the petitioners peaceful possession and enjoyment of their respective plots bearing Nos.37 to 45, 85, 86, 87, 91, 92, 93, 84 and 83 comprised in Survey NO.200/2, Nulambur Village,

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Palladam Taluk, Coimbatore District totally measuring 46951 Sq.Ft which are not cover under the G.O.Ms.No.182 (Home (Courts IIA) dated 06.03.2002 passed by the 1st respondent (in WP.No.3984/05)

IV Certiorarified Mandamus,

(1) calling for the records on the file of the 1st respondent in proceedings No.G.O.Ms.No.113 dated 13.03.2006 quash and direct the 1st respondent to collect the amount from the other partners due to the depositors and pass orders (in WP.No.13205/06)

(2) Calling for the recrods relating to the proceedings of the District Collector, Salem in ROC.47682/2002 (C-2), dated 12.02.2003 the third respondent herein and quash the same in so far with respect to the property bearing Door No.25-A, Sivasamy Street, Salem - 636001 is concerned and consequently forbear the respondents herein on their Subrodinates from in any manner interferring with or taking possession or control of the property comprised in Door No.25-A, (T.S.No.1130) Sivasamy Street, Salem - 636001, that exclusively belong to the petitioner without following the mandatory procedures as contemplated under the provisions of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishements) Act 1997 and adjudicating the claim of the petitioner with respect to the said property (in WP.25767/03)

(3) relating to the impugned communication dated 14.07.2003 which was sent by second respondent to the 4th respondent and quash the same with a direction directing respondents 3 & 4 to register the sale Deeds in respect of the land comprised in S.Nos.20/2, 20/4, 20/5, 20/6 situated at Kalapet Revenue Village, Pondicherry (in WP.26452/04)

(4) Quashing the G.Ms.No.182 (Home) (Courts IIA) dated 06.03.2003 passed by the 1st respondent in respect of the plots owned by the petitioners mentioned in Item Nos.9 & 10 of the list of immovable properties in the schedule as it has been passed erroneously and arbitrarily and without any application of mind and thereby exceeding his Jurisdiction and forbearing the 3rd respondent and his assistants from interferring with the pettioner peaceful possession and enjoyment of theri respective lands based on the G.O.Ms.No.182 Home (Courts IIA) dated 06.03.2003 passed by the 1st respondent so far as the petitioners are concerned (in WP.3985/05)

(5) calling for the entire records of the impugned order made by the 1st respondent herein in G.O.Ms.No.90 Home (Courts IIA) Department dated 03.02.2005 followed by letter from the 1st respondent to 3rd respondnet in Lr.No.113301/courts 11A/2004-3 dated 03.02.2005 and quash the same and thereby forbear the respondents 1 to 3 herein from in any way proceeding to sell the petitioners properties in (1) D.No.1/2 Sitankoil Street, Kurinjipadi Cuddalore District (2 two Vacant site at Ellaikal Street, Kurinjipadi and a House in D.No.35/22 with vacant site, Ellaikal Street, Kurinjipadi (in WP.No.11803/05)

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(6) calling for the records relating to the first respondent herein in G.O.Ms.No.10 Home (Courts IIA) Department dated 03.01.2002 and quash the same in so far as attaching the property shown as S.No.20 in the Schedule of immovable property i.e., Ground and the building at No.6, Parameswaran Street, S.V.Nagar, Ambattur, Chennai - 53, to an extent of 2000 Sq.ft is concerned and consequently direct the respondents herein to permit the petitioner to enjoy the properties as per the sale deed dated 07.02.2002 (in WP.No.26108/05)

WA.No.536/02 : Appeal preferred to this Court under clause 15 of the letters patent act against the order of this Court dated 06.02.2002 in WP.No.2667/02 presented to this Court to issue a Writ of declaration declaring that the provisions of Section 2(3), Section 3 and Section 5 of the TANPID Act 1997 (Act XLIV of 1997) are unconstitutional and against the previlages of natural Justice and ultravires.

CMA.Nos.1161 & 1162 of 2004

Appeal prefered Under Section 11 of the TANPID (Financial Establishment Act 1997 against the order of the Special Judge under TANPID Act 1997 in IA.Nos.58 & 59 of 2003 respectively in OA.Nos.6/01 dated 17.10.2003.

O R D E R

P.D.DINAKARAN,J.

I. CORNERSTONE

The Constitution is the documentation of the founding faiths of a Nation and the fundamental directions of the fulfillment. An organic, but not pedantic approach in interpreting the constitutional validity of any enactment should be the guiding principle in the judicial process. Finding of solution for the gruesome evils in economic and social life of the citizens, through the healing art of promoting Rule of Law, blending the whole statute harmoniously, without being tempted by the game of hair-splitting, to achieve the common object of the legislation should be the basic rule of construction while testing the constitutional validity of a legislation, particularly when it deals with economic and social reliefs, because the distance between societal realities and constitutional challenge often creates a dilemma while considering the legislative competency relating to a socio-economic legislation. The Court, therefore, should be more cautious as well as conscious as to its jurisdiction while irrationalising the legislative competency of the Legislature or rationalising Court's power to annul the legislation.

With this, we propose to experiment, analyze, and render our observation on the constitutional validity of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for brevity, "Tamil Nadu Act"), which, in fact, had already been upheld by the learned Single Judge of this Court (P.Sathasivam,J.) in Thiru Muruga Finance v. State of Tamil Nadu (2000 (II) CTC 609 = 2000-3-L.W.298), and the same has become final for not having been appealed against.

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II. WHY THE FULL BENCH?

2.1. Attracted by the fabulous rate of interest on the deposit, which of course is not viable commercially, the depositors, day by day started investing their savings in the financial establishments, believing the said promises of the financial establishments for higher rate of interest. The depositors, who mostly belong to the poor, lower middle and middle class, are senior citizens above 80 years, senior citizens between 60 and 80 years, widows, handicapped, driven out by wards, retired Government servants, pensioners, living below the poverty line, etc. As a result, the financial establishments, which set their business on motion on false wheels, started growing. Finding no effective remedies available, in the existing legal system to safeguard the grievance of innocent depositors, the State Government, enacted the Tamil Nadu Act.

2.2. The sole object of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 is to curb the mushroom growth of such financial establishments, which were grabbing money received as deposits from the public, on false promises for exorbitant and unprecedented high rate of interest, without any obligation to refund the deposits to the investors on maturity. The Tamil Nadu Act is also intended to provide a legal mechanism and judicious machinery to attach the properties of the financial establishments and that of the mala fide transferees, bring them for auction sale, realize the amount and to distribute the same to the depositors. Therefore, the State had carefully taken into consideration the public resentment as well as the public interest and safety, as these institutions went back of their promise not only to pay interest but also to refund the principal amount to the innocent depositors on maturity. The State had also taken note of the panic and unrest of the public, and the trauma caused to the poor and middle class people because of the false promises by the financial establishments, which dragged them to approach various authorities, executives as well as subordinate judiciary, for realization of the dues.

2.3. The Tamil Nadu Act was challenged by the financial establishments before this Court in a batch of writ petitions, viz., W.P.No.4157 of 1999 etc., on the ground that the Tamil Nadu Act is draconian, excessively harsh, more severe than the existing provisions in the different enactments, such as Companies Act, 1956, Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, as well as the provisions of the Criminal Law Amendment Ordinance, 1944 as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997; that the same was passed in haste, lacks legislative competency, liable to be struck down for the unreasonableness of various provisions as well as for violation of principles of natural justice and therefore, ultra vires the Constitution of India.

2.4. However, the learned Single Judge of this Court (P.Sathasivam,J.) in his common and elaborate order reported in Thiru Muruga Finance v. State of Tamil Nadu (2000 (II) CTC 609 = 2000-3-L.W.298) upheld the constitutional validity of the Tamil Nadu Act on all fours.

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3.1. In the meanwhile, the Reserve Bank of India addressed all the State Governments to enact suitable legislation along the lines of the Tamil Nadu Act, since existing legislation was found to be inadequate to deal with the financial establishments, which have duped large number of depositors and collected crores of rupees on false promise to repay the same with higher rate of interest, which is not viable commercially.

3.2. The Maharashtra Government, therefore, enacted Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as 'the Maharashtra Act') and the Pondicherry Government enacted Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (hereinafter referred to as 'the Pondicherry Act').

3.3. The Pondicherry Act incidentally was challenged before this Court in C.R.P.(PD) No.1352 of 2005 and W.P.No.1897 of 2006, etc. and the learned Single Judge of this Court (E.Dharma Rao,J.) by a common order dated 23.9.2006 reported in Indian Bank v. Chief Judicial Magistrate, Pondicherry & Others, 2006-4-LW 535, upheld the constitutional validity of the Pondicherry Act, of course, following the decision of P.Sathasivam,J. reported in Thiru Muruga Finance v. State of Tamil Nadu, referred supra.

3.4. On the other hand, the Full Bench of the Bombay High Court struck down the Maharashtra Act and declared the same to be ultra vires holding that the Maharashtra Act directly conflicts with the provisions of the Central Legislation such as, Companies Act, 1956, Reserve Bank of India Act, 1934 read with Banking Regulation Act, 1949, of course, following Delhi Cloth and General Mills Co. Ltd. v. Union of India, 1983 (4) SCC 166 with reference to the provisions of the Companies Act, 1956 and the decision of the Delhi High Court in Kanta Mehta v. Union of India, 1987 (62) Com Cases 771, [the view thereunder was confirmed by the Apex Court in Velayuidhan Achari, T. v. Union of India, 1993 (2) SCC 582], with reference to the provisions of Reserve Bank of India Act, 1934, and observing that the attention of the learned Single Judge (P.Sathasivam,J.) was not adequately drawn to the reasons contained in Kanta Mehta v. Union of India, referred supra.

3.5. Placing reliance on the decision of the Full Bench of the Bombay High Court reported in Vijay C.Puljal v. State of Maharashtra (2005(4) CTC 705), the present batch of writ petitions came to be filed challenging the provisions of the Tamil Nadu Act once again, both on the ground of legislative competency and unreasonableness, violating Articles 14, 19(1)(g) and 21 of the Constitution of India as well as violation of principles of natural justice.

3.6. When this batch of writ petitions came up before the Division Bench originally on 13.11.2006, it was desired by both sides that the matter may be heard by a Full Bench as the Maharashtra Act, a statute in pari materia, was already struck down by a Full Bench of Bombay High Court. Hence, the Full Bench.

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4. Heard all the parties at length.

III. THE GROUNDS OF CHALLENGE

5.1.The sheet-anchor of the petitioners' contention is that the State Government lacks legislative competency as the impugned subject matter, viz., "Banking" falls within the field of legislation of the Union of India under Entry 45 of List 1 of the VII Schedule read with Article 246 of the Constitution of India, as the view taken in the decision of the Division Bench of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, that the acceptance of deposits amounts to banking, while upholding the constitutional validity of Section 45S of Chapter IIIC read with Section 58B (5A) of Reserve Bank of India Act, 1934, has already been confirmed by the Apex Court in Velayuidhan Achari, T. v. Union of India, referred supra.

5.2. The other predominant contention is that the impugned legislation suffers from want of legislative competency of the State Government as the subject matter in question relates either to the regulation of the trading corporation, including banking, insurance and financial corporation, or relating to the regulation of corporations, whether trading or not, falling within the field of legislation of the Union of India under Entries 43 or 44 of the List I of VII Schedule read with Article 246 of the Constitution of India. In this regard reliance is placed on the decision of the Apex Court in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra.

5.3. The impugned Act is liable to be struck down as the field of legislation is already occupied by the legislations of the Central Government, viz., (i) Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949; (ii) Companies Act, 1956; and (iii) Criminal Law Amendment Ordinance, 1944 as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997, as the subject matter deals with (i) the Banking under Entry 45 of List I or; (ii) incorporation, regulation of the trading corporations under Entry 43 or Corporations under Entry 44 of List I; or (iii) offences against laws with respect to any of the matter under Entry 93 of List I.

5.4. The impugned Act is held to be ultra vires the Constitution as the provisions of the same are repugnant to the existing provisions of the (i) Reserve Bank of India Act, 1934 read with Banking Regulation Act, 1949; (ii) Companies Act, 1956; and (iii) Criminal Law Amendment Ordinance, 1944 as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997, wherein procedure prescribed for repayment of the dues is more reasonable and in compliance of the principles of natural justice and the penalty prescribed is lesser than the one prescribed in the impugned Act.

5.5. The provisions of the Tamil Nadu Act are also arbitrary, unreasonable and violative of the principles of natural justice as the competent authority is provided with unguided powers under Sections 3, 5 and 8 of the Tamil Nadu Act for attachment of the properties of the financial establishments as well as the mala fide transferees, even without pre-decision opportunity to them and

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prosecuting every person responsible for the management of the affairs of the financial establishments, in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India.

IV. SHIELD OF DEFENCE

6.1. Per contra, Mr.R.Viduthalai, learned Advocate General, defends that the Tamil Nadu Act is intended to realise the deposits made by the public in the financial establishments, whether they are incorporated or unincorporated, as the Companies incorporated under the Companies Act, 1956 are also roped in by the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Amendment Act, 2003, (Tamil Nadu Act 30/2003).

6.2. The learned Advocate General elaborately invited our attention to the societal realities that reflected in media - dailies, weeklies and monthlies, exhibiting the untold sufferings of the depositors on account of the organised crime by the financial establishments. According to the learned Advocate General, the impugned enactment is intended to ameliorate thousands of depositors from the clutches of financial establishments, who have committed a deliberate and fraudulent default in repayment of the principal and the interest after maturity, and to provide a machinery for attachment of the properties of the financial establishments as well as the mala fide transferees, to bring them for sale for realization of the dues payable to the depositors, speedy recovery of the matured and defaulted amounts due to them.

6.3. According to the learned Advocate General, the State is competent to enact a suitable legislation to meet the urgent need to protect the interest of the innocent depositors, taking into consideration the public interest in the matter by providing appropriate mechanism to operate effective control over the financial establishments and to attach the properties of the financial establishments as well as that of the mala fide transferees and to realise the dues payable to the depositors.

6.4. It was highlighted that the Government of Tamil Nadu is the first in constituting a Special Wing for recovering the dues to the depositors, who had invested their hard-earned money in the financial establishments, believing false promises for higher rate of interest.

6.5. As per the statistics as on July, 2002, about Rs.1945 crores were collected from over 19 lakhs of depositors. These depositors belong to either poor or middle-class; retired Government servants and pensioners; dependents or driven out by wards; senior citizens or economically weaker sections; and so on. The above public deposits, however, are either siphoned or diverted mala fide in the hands of financial establishments. The commission and omission of the financial establishments in this regard is unique, but well-organized. Such activities of the financial establishments constitute white-collar crime, which belongs to a category by itself, and ruins the safety and interest of the public in the society. The hue and cry raised by these huge number of depositors, not only leads to public disorder but also creates law and order problem in the State often. Hence, the State Government rightly enacted the impugned legislation to maintain public order.

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6.6. According to him, the Government is within its legislative competency to bring out an appropriate legislation to find a solution not only to curb the activities of such financial establishments, but also to find a permanent solution to the tragedy of the depositors with suitable provisions for attaching the properties of the financial establishments and that of the mala fide transferees, and to bring them to sale and realise the amount payable to the depositors. Therefore, the impugned Act is not focused on the transaction of banking or the acceptance of deposit, but it is more on the delinquency of collecting money from a community of depositors, who are part and parcel of the public and with a view to protect such public interest.

6.7. The learned Advocate General justifies the legislative competency of the State in bringing out the impugned legislation, taking recourse to Entries 1, 30 and 32 of the State List, based on the doctrine of pith and substance.

6.8. It is his contention that the impugned legislation is intended to deal with neither the Banks, which do the business of banking as they are all governed by the provisions of the Reserve Bank of India Act, 1934 read with Banking Regulation Act, 1949, nor the non banking financial companies incorporated under the Companies Act, 1956, as none of the said legislations, said to have occupied the field, provides a solution to wipe the tears of several lakhs of depositors and to realize the dues effectively from the financial establishments, which ramped into public disorder.

6.9. Meeting the point of occupied field, the learned Advocate General contends that the State Government never intended to enact any legislation, the subject matter of which is governed under the existing laws, namely Section 58A of the Companies Act, 1956, which only regulates the acceptance of the deposits and Section 45S of Reserve Bank of India Act, 1934 which prohibits the acceptance of the deposits, but only intended to protect the interest of the depositors for realization of the dues, which they are entitled to, without dragging them for a legal battle from pillar to post. Therefore, the decision of the Apex Court in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra, which deals with Section 58A of the Companies Act, 1956 and Rule 3A of the Companies (Acceptance of Deposits) Rules, as well as the decision of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, which was upheld by the Apex Court in Velayuidhan Achari, T. v. Union of India, referred supra, dealing with Section 45S of the Reserve Bank of India Act, 1934 has no bearing to the impugned enactment.

6.10. Assuming that the powers conferred on the competent authorities and the Special Court under the provisions of the Tamil Nadu Act already exist with the appropriate authorities under the Reserve Bank of India Act, 1934 and Companies Act, 1956, it is contended that there is no repugnancy between the Tamil Nadu Act and Central Acts which provide lesser or lighter consequences, in view of the objects and reasons of the enactment, in providing speedy solution to the agony of the depositors for realization of the dues and on account of the assent given by the President of India for the impugned Act,

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and, in any event, such incidental trenching upon the field of other legislature is permissible under law.

6.11. It is further contended that the penal provisions contained in the enactment are only incidental as the main object is to protect the interest of the depositors, viz., the money should come back to the depositors and the fraudulent defaults should be rectified by such attachment, auction sale and realization.

6.12. Alternatively, it is contended that the field of legislation of the impugned Act is also traceable to Entries 1, 7, and 8 of the Concurrent List (List-III), viz., Entry 1 of the Concurrent list deals with criminal law, including all matters included in the Indian Penal Code, but excluding offences against laws with respect to any of the matters specified in Lists I and II; Entry 7 deals with contracts; and Entry 8 deals with actionable wrongs, respectively, as the assent of the President under Article 254(2) of the Constitution of India removes the embargo of any such lack of legislative competency.

6.13. The learned Advocate General also opposes the reliance placed on the Criminal Law Amendment Ordinance, 1944, as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997, as the offences dealt with in the impugned Act are unique and calculated, causing economic and social disorder in the society and not covered under the offences scheduled thereunder. According to the learned Advocate General, the commission or omission which attracts the provisions of the Tamil Nadu Act are not governed by any of offences scheduled under the Criminal Law Amendment Ordinance, which require mens rea to be satisfied; whereas it is not so in the case of the statutory offence chargeable under Section 5 of the Tamil Nadu Act. The provisions provided under the Ordinance are all subject to the termination of the criminal proceedings of the scheduled offences. But, in the case of the impugned Tamil Nadu Act, the attachment of the properties is intended to provide an effective remedy to the aggrieved depositors, viz., for the realisation of the dues payable to the depositors equitably.

6.14. The learned Advocate General stoutly opposes the contention of the petitioners that the impugned Act is arbitrary, unreasonable and discriminatory, and violative of principles of natural justice, and thereby, offending Articles 14, 19(1)(g) and 21 of the Constitution of India.

6.15. For all these reasons, it is contended that the decision of the Full Bench of the Bombay High Court in Vijay C.Puljal v. State of Maharashtra, referred supra, has no bearing to test the constitutional validity of the impugned enactment.

V. NUCLEUS OF THE CONFLICT

7. In the light of the above conflicting contentions, the following issues arise predominantly for our consideration:

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(i) Whether the Tamil Nadu Act stands the test of reasonableness and does not violate Articles 14, 19(1)(g) and 21 of the Constitution of India, and the principles of natural justice? and

(iii) Whether the Tamil Nadu Government has legislative competence to enact the impugned Tamil Nadu Act?

VI. ANALYSIS & CONSIDERATION

8.1. We have given our careful consideration to the submissions of all parties. We propose to legally and logically analyse and scientifically consider the above issues (i) and (ii) compartmentalized as hereunder:

8.2. Issue No.(i):"Whether the Tamil Nadu Act stands the test of reasonableness and does not violate Articles 14, 19(1)(g) and 21 of the Constitution of India, and the principles of natural justice?"

A) THE TAMIL NADU PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 1997.
   (a) OBJECTS AND REASONS
   (b) DEFINITIONS UNDER SECTION 2
   (c) ATTACHMENT OF PROPERTIES BY COMPETENT AUTHORITY UNDER SECTION 3
   (d) STATUTORY OFFENCE AND PENALTY UNDER SECTIONS 5 AND 5A
   (e) SPECIAL COURT AND CONFIRMATION OF INTERIM ATTACHMENT UNDER SECTIONS 6 AND 7
   (f) ATTACHMENT OF PROPERTIES OF MALA FIDE TRANFEREES UNDER SECTION 8
   (g) SECURITY AND ADMINISTRATION OF THE PROPERTY ATTACHED AND APPEAL UNDER SECTIONS 9 AND 10

B) TAMIL NADU PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) RULES, 1997

C) VALIDITY WITH REFERENCE TO THE PRINCIPLES OF NATURAL JUSTICE

D) VALIDITY WITH REFERENCE TO THE TEST OF REASONABLENESS AND ARBITRARINESS READ WITH ARTICLES 14, 19(1)(g) AND 21 OF THE CONSTITUTION OF INDIA

8.3. Issue No.(ii): "Whether the Tamil Nadu Government has legislative competence to enact the impugned Tamil Nadu Act?"

A) VIJAY C.PULJAL V.STATE OF MAHARASHTRA, (2005 (4) CTC 705) - (THE MAHARASHTRA ACT)

B) THE PRINCIPLES GOVERNING THE TEST OF LEGISLATIVE COMPETENCY
   (a) ARTICLES 245 AND 246 OF THE CONSTITUTION OF INDIA

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(b) THE CONCEPT OF OCCUPIED FIELD

(c) LIBERAL AND HARMONIOUS CONSTRUCTION

(d) APPLICATION OF THE DOCTRINE OF PITH AND SUBSTANCE, THE DOCTRINE OF ANCILLARY AND INCIDENTAL TRENCHING AND THE DOCTRINE OF ECLIPSE

(e) THE IMPUGNED TAMIL NADU ACT AND THE RELEVANT ENTRIES IN LISTS I, II AND III OF THE VII SCHEDULE TO THE CONSTITUTION OF INDIA

(f) THE IMPUGNED TAMIL NADU ACT WITH REFERENCE TO SECTION 58A OF COMPANIES ACT, 1956 AND SECTIONS 45S AND 58B(5A) AND 58B(5B) OF RESERVE BANK OF INDIA ACT, 1934

(g) THE IMPUGNED TAMIL NADU ACT AND SECTIONS 45S AND 58B(5A) OF RESERVE BANK OF INDIA ACT, WITH REFERENCE TO THE DECISION IN KANTA MEHTA V. UNION OF INDIA CASE AND VELAYUIDHAN ACHARI, T. V. UNION OF INDIA CASE

(h) THE IMPUGNED TAMIL NADU ACT AND SECTION 58A OF THE COMPANIES ACT, 1956 WITH REFERENCE TO THE DELHI CLOTH AND GENERAL MILLS CO. LTD. V. UNION OF INDIA CASE

(i) THE IMPUGNED TAMIL NADU ACT WITH REFERENCE TO THE CRIMINAL LAW AMENDMENT ORDINANCE, 1944 AS MADE APPLICABLE BY THE CRIMINAL LAW (TAMIL NADU AMENDMENT) ACT, 1997

(j) THE IMPUGNED TAMIL NADU ACT AND THE RELEVANT ENTRIES, VIZ., 1, 7 AND 8 IN LIST III OF VII SCHEDULE TO THE CONSTITUTION OF INDIA

(k) THE IMPUGNED TAMIL NADU ACT AND ENTRY 32 OF LIST II WITH REFERENCE TO THE POWER TO REGULATE

(l) THE IMPUGNED TAMIL NADU ACT AND THE CONCEPT OF PUBLIC ORDER AND ENTRY 1 OF LIST II WITH REFERENCE TO THE POWER TO MAINTAIN PUBLIC ORDER

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VII. Issue: (i)

Question of reasonableness, violation of principles of natural justice and violation of Articles 14, 19(1)(g) and 21 of the Constitution of India

9. We hereunder analyse each and every provision of the impugned Tamil Nadu Act independently and also harmoniously, reading the statute as a whole, in the light of the statement of objects and reasons of the impugned

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legislation, as amended by the Tamil Nadu Amendment Act 30 of 2003, to decide whether the Tamil Nadu Act stands the test of reasonableness and does not violate Articles 14, 19(1)(g) and 21 of the Constitution of India, and the principles of natural justice?

VII-A(a). OBJECTS AND REASONS OF THE TAMIL NADU PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 1997.

10.1. When a law is impugned on the ground that it is ultra vires, it is a settled law that what has to be ascertained is the true character of the legislation. To do that one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. [vide: A.S.Krishna v. State of Madras (AIR 1957 SC 297)].

10.2. We therefore proceed to appreciate how awesome the object and scope of the impugned Tamil Nadu Act and the magnitude of its provisions.

10.3. 1The statement of objects and reasons of the Tamil Nadu Act reads as follows:

> "There is mushroom growth of Financial Establishments not covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934) in the State in the recent past with the sole object of grabbing money received as deposits from the public, mostly middle class and poor, on the promise of unprecedented high rates of interest and without any obligation to refund the deposits to the investors on maturity. Many of these Financial Establishments have defaulted to return the deposits on maturity to the public running to crores of rupees and thereby inviting public the resentment, which created law and order problems in the State. The Government have, therefore, decided to undertake suitable legislation, in the public interest, in order to regulate the activities of such Financial Establishments, other than those covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934).
>
> 2. The Bill seeks to give effect to the above decision."
>
> (emphasis supplied)

10.4. A reading of the statement of objects and reasons of the Tamil Nadu Act would go to show that it does not concentrate on incorporation, regulation of banking, but, on the other hand, the Tamil Nadu Act is more concerned with returning money to the depositors. The words found in the statement of objects and reasons, viz., "in the public interest, in order to regulate the activities of such Financial Establishments" would mean that the Tamil Nadu Act has been enacted to protect the interests of depositors.

VII-A(b). DEFINITIONS UNDER SECTION 2

11.1. Originally, Sections 2(2) and 2(3) define "deposit" and "financial establishments" as follows:

> (2) "deposit" means the deposit of a sum of money made with the financial establishment for a fixed period, for interest or return in any kind;

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(3)"financial establishment" means an individual, an association of individuals, a firm carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956 (Central Act 1 of 1956) or a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 (Central Act X of 1949) or a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (Central Act II of 1934)"

(emphasis supplied)

11.2. But, an amendment was brought in by the Protection of Interests of Depositors (In Financial Establishments) Amendment Act, 2003, Tamil Nadu Act 30 of 2003, the object being:

"The Tamil Nadu Protection of Interest of Depositors (in financial establishments) Act, 1997 (Tamil Nadu Act 44 of 1997) was enacted by the Government of Tamil Nadu to protect the interest of the depositors who have lost their hard earned money with the financial institutions. At present, there is no provision in the said Act for attaching the properties of the persons who borrowed money from the financial establishments and for the sale of attached property in public action and for the equitable distribution of the sale proceeds to the depositors. In order to overcome the shortcomings and to make the said Tamil Nadu Act 44 of 1997 more effective, the Government have decided to amend the said Act so as to-

(1)bring a company registered under the Companies Act, 1956 (Central Act 1 of 1956) and a non-banking financial company within the purview of the Act;
(2)make the non-payment of interest and failure to render service for which deposit has been made, as offences under the Act;
(3)attach the properties of the person who has borrowed money from the financial establishments and failed to return the money;
(4)appoint more than one competent authority under the Act;
(5)constitute Special Courts for different areas and for different cases and to appoint Special Public Prosecutors for each of the Special Courts;
(6)specify the time limit within which the Special Court shall pass the final order;
(7)compound the offences punishable under the Act; and
(8)to sell the attached properties in public auction and to distribute the sale proceeds among the depositors.

2. The Bill seeks to give effect to the above decision."

(emphasis supplied)

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11.3. By way of the Tamil Nadu Act 30 of 2003, the definition of "deposit" and "financial establishments" were amended as follows:

"Section 2. Definitions:
(1) ...

(2)"deposit" means the deposit of money either in one lump sum or by instalments made with the financial establishments for a fixed period, for interest or for return in any kind or for any service;

(3)"financial establishment" means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 (Central Act X of 1949)"

(emphasis supplied)

11.4. Thus, by the Amendment Act 30 of 2003, the companies registered under the Companies Act, 1956 and the non banking financial companies, are also brought within the purview of the Act.

VII-A(c). ATTACHMENT OF PROPERTIES BY COMPETENT AUTHORITY UNDER SECTION 3

12.1. Section 3 of the Tamil Nadu Act provides for attachment of properties on default of return of deposits and reads as follows:

"3. Attachment of properties on default of return of deposits:

Notwithstanding anything contained in any other law for the time being in force -

(i) where upon complaints received from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity, or fails to pay interest on deposit or fails to provide the service for which deposit has been made, or

(ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors,

and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, or to make payment of interest or to provide the service, the Government may, in order to protect the interests of the depositors of such Financial Establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment, or if

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it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, partner, director, manager or member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority.

(emphasis supplied)

12.2. Pre-amended Section 3 reads as under:

"3. Attachment of properties on default of return of deposits:

Notwithstanding anything contained in any other law for the time being in force -

(i) where upon complaints received from a number of depositors, that, any Financial Establishment defaults the return of deposits after maturity, or

(ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors,

and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, the Government may, in order to protect the interests of the depositors of such Financial Establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, manager or member of the said Financial Establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority."

(emphasis supplied)

12.3. Accordingly, by virtue of the Tamil Nadu Act 30 of 2003, the properties of the persons who borrowed money from the financial establishments are also roped in for attachment and sale in public auction for realization of dues payable to the depositors by equitable distribution.

12.4. Section 4 of the Tamil Nadu Act empowers the Government to notify one or more competent authorities to exercise control over the properties attached and the same reads as follows:

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"4. Competent authority: - (1) The Government may, by notification, appoint one or more authorities for such area or areas or such case or cases as may be specified in the notification hereinafter called 'the competent authority' to exercise control over the properties attached by the Government under section 3.

(2) The Competent authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) Upon receipt of the orders of the Government under section 3, the Competent authority shall apply within thirty days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute.

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under section 3.

(5) The Competent authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders.

(6) For the purpose of crediting and dealing with the money realised by the Competent authority, he shall open an account in any Scheduled commercial bank."

12.5. Section 4(3) of the Tamil Nadu Act contemplates that the Competent authority shall apply within thirty days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute. Section 4(4) of the Act prescribes the procedure to be followed for making the ad-interim order of attachment absolute. Accordingly, the application shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded. The affidavit should state the amount of money or value of other property believed to have been procured by means of the deposit. The application should also accompany an affidavit furnishing the details, if any, of persons in whose names such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3. Apart from the jurisdiction vested in the Special Court under Section 6 read with Section 4(3) of the Act, Section 4(5) also empowers the Competent authority to make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders. By these provisions a comprehensive mechanism has been provided for

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attaching the properties of not only the financial establishments, but also that of such other persons mentioned under Section 3 of the Tamil Nadu Act, in order to plug the loopholes either siphoning or diverting the funds of the depositors mala fide.

VII-A(d). STATUTORY OFFENCE AND PENALTY UNDER SECTIONS 5 AND 5A

13.1. Section 5 creates a statutory offence without contemplating any mens rea and prescribes penalty on every person responsible for the management of affairs of the financial establishment and the same reads as follows:

> "Section 5. Default in repayment of deposits and interest honouring the commitment-
>
> Notwithstanding anything contained in Chapter II, where any financial establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or fails to return in any kind, or fails to render service for which the deposit has been made, every person responsible for the management of the affairs of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such financial establishment is also liable for fine which may extend to one lakh of rupees."

13.2. Section 5A inserted by Tamil Nadu Act 30 of 2003, empowers the competent authority to compound the offence and the same reads as follows:

> "Section 5A. Compounding of offence.- (1) An offence punishable under Section 5 may, before the institution of the prosecution, be compounded by the Competent Authority or after the institution of the prosecution, be compounded by the Competent Authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.
>
> (2) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith."

13.3. As per Section 5A of the Act, the competent authority may compound the offence before the institution of the prosecution; and also after the institution of the prosecution, with the permission of the Court, on payment of the amount due to the depositors with or without interest.

13.4. A harmonious reading of Sections 5 and 5A of the Act make it clear that the main scope of the enactment is not to punish either the financial establishments or the persons responsible for the management of the financial establishments, but primarily to realise the dues payable to the depositors and incidentally, to regulate and control the activities of the financial establishments, if necessary, by imposing appropriate punishment, the outer limit of which is indicated in Section 5 of the Tamil Nadu Act, which, in our considered opinion, cannot be complained of as if unguided powers have been conferred on the competent authorities. As it is settled that the legislature

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is free to prescribe adequate punishment while dealing with economic and social offences, it is not permissible for this Court to interfere with such powers.

VII-A(e). SPECIAL COURT AND CONFIRMATION OF INTERIM ATTACHMENT UNDER SECTIONS 6 AND 7

14.1. Section 6(1) of the Act provides for the constitution of the Special Courts in the cadre of District and Sessions Judges and their jurisdiction, and the same reads as follows:

> "6. Special Court.-- (1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the High Court, by notification, constitute one or more Special Courts for such area or areas or such case or cases as may be specified in the notification in the cadre of a District and Sessions Judge."

14.2. Section 6(2) confers exclusive jurisdiction on the Special Courts in respect of any matter to which the provisions of this Act apply.

14.3. Section 6(3) of the Act provides for the transfer of the pending cases from other Courts to the Special Courts.

14.4. Section 6(2), therefore, clarifies that the power conferred on the competent authority under Section 4(5) to move any Court for appropriate orders, apart from applying for making an ad-interim order of attachment absolute, is subject to the powers of the Special Court conferred under section 6(2) of the Act and as such, we do not see any conflict between Sections 4(5) and 6(2), as the same are also intended to plug the loopholes, viz., permitting those who have committed a well organised crime to escape from the purview of the impugned Tamil Nadu Act, by circumventing the legal proceedings, and to avoid multiplicity of litigation. Therefore, there is no overlapping.

15.1. Section 7 prescribes the procedure to be followed by the Special Court in the matter of attachment, sale, etc. and reads as follows:

> "7. Powers of Special Court regarding attachment, sale, realisation and distribution:
>
> (1) Upon receipt of an application under Section 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under Section 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.
>
> (2) The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

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(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under Sub-section (4) or Sub-section (6).

(4) If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad interim order of attachment absolute.

(5) If cause is shown or any objection is made as aforesaid, the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.

(6) After investigation under Sub-section (5) the Special Court shall pass an order within a period of one hundred and eighty days from the date of receipt of an application under sub-section (3) of Section 4 either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad interim order attachment.

Provided that the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in Sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

(7) Where the ad-interim order of attachment is made absolute, on an application by the Competent authority, the Special Court shall direct the Competent authority to sell the properties attached, by public auction and realise the sale proceeds.

(8) The Special Court shall, on an application by the Competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors, of the money attached or realised out of the sale under sub-section (7)."

15.2. Sections 7(1), 7(2), 7(3) and 7(4) provide a post-decision opportunity to the financial establishments or any other person whose property was attached by the Government under Section 3, furnishing them the copy of the application and affidavit or any other evidence filed by the competent authority in this regard to have their say in the matter, before making the ad-interim order of attachment absolute. That apart, any person claiming an interest in the property attached or any portion thereof, is entitled to make an objection at any time before the ad interim order of attachment is made

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absolute, even though such person is not served with notice, thus satisfying the principles of natural justice without standing on technicalities.

15.3. Section 7(5) enables the Special Court to follow the provisions of Code of Civil Procedure while considering the objections received in this regard and also permits the aggrieved parties to adduce evidence to show that on the date of attachment, he had some interest in the property attached.

15.4. Section 7(6) prescribes the period of limitation of 6 months, that is, 180 days from the date of receipt of application under section 4(3) of the Act, either,

(i) to make the ad interim order of attachment absolute, or
(ii) to vary it by releasing a portion of the property from the attachment; or
(iii) to cancel the attachment order.

15.5. Proviso to section 7(6) also provides to release the amount or property of the value in excess of the value required for repayment to the depositors.

15.6. Under section 7(7) of the Act the Special Court is empowered to direct the competent authority to sell the property attached by public auction and realise by sale, and on such realisation, to equitably distribute among the depositors, as per section 7(8).

VII-A(f). ATTACHMENT OF PROPERTIES OF MALA FIDE TRANFEREES UNDER SECTION 8

16.1. Section 8 provides for attachment of properties of mala fide transferees and the same reads as follows:

"8. Attachment of property of mala fide transferees.-

(1) Where the assets available for attachment of a Financial Establishment or other person referred to in section 3 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said Financial Establishment has transferred (whether after the commencement of this Act or not) any of the property otherwise than in good faith and for consideration, the Special Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (5) of Section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith

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and for consideration, the Special Court shall order the attachment of so much of the said transferee's property as in the opinion of the Special Court equivalent to the proper value of the property transferred."

16.2. Section 8, thus, deals with attachment of properties of mala fide transferees where financial establishments clandestinely transferred the properties to third parties with intention to deceit the depositors either with or without proper consideration and thereby rendered the value of the properties attached not sufficient to repay the amounts to the depositors. Therefore, the State rightly seals such leakage by attaching the properties of such mala fide transferees under section 8 of the Act, which is again, in all fairness, subject to section 7(5) of the Act.

16.3. We shall consider as to the compliance of the principles of natural justice in the procedure prescribed under Sections 3, 7 and 8 of the Tamil Nadu Act later.

VII-A(g). SECURITY AND ADMINISTRATION OF THE PROPERTY ATTACHED AND APPEALS UNDER SECTION 9 AND 10

17.1. Section 9 fairly provides for security in lieu of attachment and it reads as follows:

"9. Security in lieu of attachment.- Any Financial Establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the Special Court, satisfactory, and sufficient it may cancel, the ad-interim order of attachment or, as the case may be, refrain from passing the order of attachment."

17.2. Section 10 deals with administration of properties attached which reads as follows:

"10. Administration of the property attached.- The Special Court may, on the application of any person interested in any property attached under this Act, and after giving the Competent authority an opportunity of being heard, make such orders as the Special Court considers just and reasonable for -

(a) providing from such of the property attached as the applicant claims an interest in such sums as may be reasonably necessary for the maintenance of the applicant and for his family, and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Special Court under section 5;

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(b) safeguarding so far as may be practicable the interest of any business affected by the attachment and in particular in the interest of any partners in such business."

17.3. Section 9 empowers the Special Court to either cancel or refrain from passing any order of attachment after satisfying with the security furnished by the financial establishments in lieu of attachment. Section 10 empowers the Special Court after hearing the financial establishments or other persons interested, to consider the just and reasonable cause to make an appropriate provision for maintenance of the applicants and their family and to safeguard the interest of any business of the applicants affected by the attachment as well as the interest of any partners of such business.

18. Any order passed by the Special Court is appealable in law before the High Court within 30 days from the date of order under section 11 of the Act.

VII-B. TAMIL NADU PROTECTION OF INTERESTS OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) RULES, 1997

19. The Rules framed under the Tamil Nadu Act, viz., The Tamil Nadu Protection of Interests of depositors (In financial establishments) Rules, 1997 empowers the competent authority to require any financial establishment, or its officers or any officer or authority of the Government or a local authority or any other person to furnish such information as may be required and such financial establishments or officer or authority of the Government or local authority or person shall furnish such information to the competent authority under Rule 4. Under Rule 5 the competent authority shall make a report to the Special Court regarding absconding persons. Rule 6 provides the power to freeze or seize the properties as well as the documents, and books of accounts, and such power is only supplemental to the power to pass an order of ad interim attachment. Rule 7 and 10 render the transfer of any money or property of the financial establishments attached under Section 3 of the Act as null and void, and protect the action of the Government or the competent authority or any other person done or intended to be done in good faith in carrying out the provisions of the Act.

VII-C. VALIDITY WITH REFERENCE TO THE PRINCIPLES OF NATURAL JUSTICE

20. Courts should interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people. Where the Legislature fulfills its purpose and enacts laws, which in its wisdom, is considered

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necessary for the solution of what after all is a very human problem the tests of reasonableness have to be viewed in the context of the issues which faced the Legislature. In the construction of such laws and particularly in judging of their validity, the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole. It is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute. The Courts, it is accepted, must presume that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds [vide: Pathumma v. State of Kerala, (1978) 2 SCC 1].

21. The power conferred under Section 3 on the authority to pass ad interim order of attachment of money or any other property alleged to have been procured either in the name of the financial establishments or in the name of any other person, from and out of the deposits collected by the financial establishments or if it transpires that if such money or other property is not available for attachment or not sufficient for repayment of deposits, such other property of the said financial establishments or the promoter, partner, director, member of the said financial establishments or a person who has borrowed money from the financial establishments to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the financial establishments, in our considered opinion, is nothing but a power conferred on the competent authority required to be exercised in an emergent situation, where the financial establishment or any person mentioned in section 3 of the Act attempts clandestinely to siphon of or divert the funds of the depositors by mala fide transfers. Therefore, the question of giving an opportunity before passing such order of ad interim attachment does not arise.

22. What is the reasonable opportunity alleged to have been violated in the process, as complained by the financial establishments alas the complaint of lack of reasonable opportunity to the financial establishments in courtesy to the principles of natural justice, before attaching the property, in our considered opinion, could, by itself, not be termed as fatal to the principles of natural justice, as what is sought under such attachment is not to deprive any rights of the financial establishments or the directors, but to prevent any further unjust diversification of the funds of the depositors. Therefore, there cannot be any hesitation or reluctance in exercise of such power of attachment without affording an opportunity to the financial establishments as the Act provides a post-decision opportunity and also permits the innocent third parties to approach the Special Court for variation and modification, and we find sufficient justification in this regard.

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23. However, the Act, under Section 7, provides a notice being given to the financial establishments or any other person whose property is attached under Section 3, and hence, satisfies the principles of natural justice by giving post-decision opportunity to the financial establishments or any person whose property is attached as per Section 3 of the Act.

24. It is a settled law that the phrase "natural justice" is not capable of static and precise definition. However, a duty to act fairly, viz., in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial. But, the rules of natural justice operates only in areas not covered by any law validly made. They can supplement the law but cannot supplant it. If a statutory provision either specifically or by inevitable implication excludes the application of rules of natural justice then the court cannot ignore the mandate of the legislature. The power conferred on the competent authority under section 3 of the Act for attaching the property of the financial establishments or that of such person mentioned thereunder, is one of such nature. Whether or not the application of principles of natural justice in a given case has been excluded wholly or in part, in exercise of the statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. The rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. The audi alteram partem rule has many facets, (a) notice of the case to be met; (b) opportunity to the party aggrieved to explain. Undoubtedly these rules cannot be sacrificed at the altar of the administrative convenience or celerity. Both these above facets of audi alteram partem rules are well safeguarded in the impugned Tamil Nadu Act. Above all, even those who have not been served with notice before making the ad interim order absolute are also permitted to have their say and substantiate their interest on the date of adjournment.

25. Distinguishing the very absolute Rule of uniform application of the principles of natural justice, the Act under section 3 read with section 7 excludes the prior hearing but contemplates a post-decision hearing amounting to a full review of original ad interim order of attachment on merits and satisfies the principles of natural justice in spirit and substance, by hearing the persons interested before taking an administrative decision for making the ad interim order of attachment absolute. Further, under the scheme of the Act, the offences are compoundable under section 5A of the Act. The competent authority may compound the offence, before the institution of the prosecution, and after the institution of the prosecution, with the permission of the Court, on payment of the amount due to the depositors with or without interest.

26. Wide option was also provided under the Act for settling the amount without payment of interest, thus giving a fair play in the joints. That apart, during the course of making the ad interim order of attachment absolute,

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by contemplating notice to the interested parties and permitting them to file their objections and also hearing the third parties, who have not even been served with notice, but filed their objections, requiring the Special Court to pass appropriate orders within 6 months from the date of filing the application under Section 4(3) of the Act, and then requiring the Special Court to pass appropriate orders on merits under section 7(4) of the Act, by which it may make the ad interim order of attachment absolute, vary it or cancel it and also by providing the Special Court to release the excess amount of property attached, which is more than the amount required for repayment to the depositors and then empower the Competent authority to bring the property to auction sale and then distribute the sale proceeds equitably, satisfies the principles of natural justice.

27. The opportunity given to the financial establishments, the persons aggrieved or person interested as mentioned above is not minimal, but, should be viewed pragmatically as the same satisfies the principles of natural justice with utmost promptitude. The Act therefore provides very flexible hearing giving opportunity to the financial establishments and persons whose properties were attached and procedure provided in this regard is malleable and adaptable to the concept of principles of natural justice. The dispensation of pre-decision opportunity while passing ad interim order of attachment under Section 3 of the Act is inevitable, as the very object of the enactment is to control, regulate and curb the activities of malicious transfer of funds by the financial establishments and to realise the amount from the financial establishments and distribute the same to the depositors equitably and thus, protect the interest of the innocent depositors.

28.1. We, therefore, do not see any justification in the complaint for not affording a reasonable opportunity before attaching the property, as there cannot be any justified reason to fleece the funds that actually belongs to the depositors.

28.2. If that be so, can't the State rush-in to bring out necessary enactment in order to provide a stabilised socio-economic justice and to provide infallibility by unique machinery of attaching the properties to safeguard the interest of the depositors?

28.3. Can't the State under such circumstances save the moths from the fire except by putting out the fatal glow, by way of the impugned legislation?

28.4. Even on the point that properties of innocent third parties were also attached without giving any opportunity to them, we do not find any force as such innocent third parties are entitled to approach the Special Court for necessary remedy, after satisfying their bona fide. For their any hardship in the interregnal period, the answer is that when a general evil is sought to be suppressed some martyrs may have to suffer, for the legislature cannot easily make meticulous exceptions and it has to proceed on broad categorizations and not singular individualization.

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29. It is a settled law that the principles of natural justice is to conform to achieve the public good, and must conform, grow and be tailored to serve the public interest and should respond to the demands of an evolving society, but, not to safeguard the individual interest, viz., financial establishments, particularly, when their act of acceptance of deposits from the innocent public wooing exorbitant rate of interest is illegal and opposed to public policy, as the same is barred and prohibited both under Companies Act, 1956 as well as Reserve Bank of India Act, 1934, which we deal with later.

30. We should refrain ourselves to give a narrow view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which the Act seeks to achieve. Both the construction as well as the operation of the Act is well-structured and provided with inbuilt procedure leaving no escape root.

31. In any event, we do not see any prejudice caused to financial establishments or to the persons whose properties were attached by way of ad-interim orders by the competent authorities and brought under the jurisdiction of the Special Court for passing appropriate orders under section 7 of the Act, after giving reasonable opportunity to the respective parties from whom the properties were attached.

32. The implication of principles of natural justice is presumptive which may be excluded by express words of statute or by necessary intendment where the conflict is between public interest and private interest. In the instant case, the interest of the depositors who are more than 19 Lakhs in number constitutes public interest prevailing over the private interest of the financial establishments and therefore, the presumption must necessarily be in favour of the public interest. In such case, the urgency requires a preemptive action as a strategic necessity. Then, there may be no question of observing pre-decision hearing, as in the case of preemptive action, it is deemed appropriate to postpone the hearing of principles of natural justice by providing a post-decision opportunity which is rightly satisfied in the instant case.

33.1. However, where the assets available for attachment of a financial establishment or other persons referred to in section 3 are found to be less than the amount or value which such establishment is required to pay to the depositors, the competent authority is empowered to make an application to the Special Court under Section 8(1) of the Act for attaching the properties of mala fide transferees. If the Special Court is satisfied by affidavit or otherwise that there is a reasonable cause that the said financial establishments have transferred any property otherwise than in good faith for consideration, after necessary notice of hearing given to the transferees of such properties to show cause why so much of the transferees' property equivalent to the proper value of the property transferred should not be attached, shall pass an order of attachment so much of the said transferees' property as in its opinion equivalent to the proper value of the property

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transferred. It is, therefore, clear that while exercising such power on mala fide transferees, the principles of natural justice are fully satisfied.

33.2. Therefore, the impugned Tamil Nadu Act as a whole inspires the confidence of the societal realities, magnificently satisfies the principles of natural justice and excellently meets the needs of the victims.

VII-D. VALIDITY WITH REFERENCE TO THE TEST OF REASONABLENESS AND ARBITRARINESS READ WITH ARTICLES 14, 19(1)(g) AND 21 OF THE CONSTITUTION OF INDIA

34. The petitioners vehemently contend that the procedure prescribed and the unguided powers conferred on the competent authority, to pass an order of ad interim attachment of the properties of financial establishments under section 3 of the Act, to initiate prosecution under section 5 of the Act, and to attach the properties of mala fide transferees under Section 8 of the Act, are arbitrary, unreasonable, violative of principles of natural justice and also offend Articles 14, 19(1)(g) and 21 of the Constitution of India. But, we are unable to accept the same, because what all the Act intends is not to interfere with the rights of the financial establishments and those responsible for the management and affairs of the financial establishments conferred on them under either of Articles 14, 19(1)(g) and 21 of the Constitution of India, but to protect the interest of the depositors, to find a way for realisation of the dues payable to them, by making ad interim orders of attachment of the property of financial establishments, procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishments, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, partner, director, manager or member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default.

35.1. The contention that the inclusion of the words, "fails to provide the service for which deposit has been made" under Section 3 of the Act, and the words "fails to render service for which the deposit has been made" under Section 5 of the Act is unreasonable, is liable to be rejected, because in judging the reasonableness of such restrictions, the Court must bear in mind that the legislature is the best judge for what is good for the community, by whose suffrage it comes into existence (State of Bihar v. Sri Kameshwar Singh, AIR 1952 SC 252). Even though ultimately it is for the Court to test the reasonability, and the Court must not shirk its solemn duty, the test of reasonableness has to be applied to each individual statute impugned but not on the basis of abstract standard or general pattern of reasonableness.

35.2. Testing the inclusion of words "fails to provide the service for which deposit has been made" under Section 3 of the Act, and the words "fails to render service for which the deposit has been made" under Section 5 of the Act, in the light of legislative intention to protect the interest of the depositors, who have deposited their hard earned money, wooed by the promise of higher rate of interest, there cannot be any second opinion that the State is

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right in including such words. Therefore, what has to be seen is whether by such inclusion of words, the legislature has overstepped the permissible limits of reasonableness.

35.3. Is there any plausibility in the contention of the petitioners that the aggrieved depositors need the legislation to protect them or is all well in the world of money? This question can be answered only by the legislature but not by this Court, particularly when the acceptance of public deposits from any individual, much less a firm or company, whether incorporated or unincorporated is prohibited under the provisions of Reserve Bank of India Act, 1934 read with Banking Regulation Act, 1949, and the court should restrain its hands from striking down the impugned legislation as unconstitutional, because it is remembered that in the matter of economics, sociology, and other specialised subjects, the Court should not embark upon the views of half-lit infallibility and reject what economists or social scientists have, after detailed studies, commended as the correct course of action, as held by the Apex Court in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra, and therefore, we do not see any unreasonableness in including the words "fails to provide the service for which deposit has been made" under Section 3 of the Act, and the words "fails to render service for which the deposit has been made" under Section 5 of the Act.

36. Piercing through the veil, we are clear that the Act is never intended to interfere with the rights of the petitioners/financial establishments or any person managing the affairs of financial establishments. We are, therefore, also not able to appreciate the contention that sections 3, 5 and 8 of the Tamil Nadu Act offend Articles 14, 19(1)(g) and 21 of the Constitution of India, nor we could agree that the punishment prescribed in the Act is more excessive and harsh. The petitioners are not entitled to claim premium on their illegal act of accepting deposits, promising exorbitant rate of interest which is not commercially viable. The legislature was not unaware of the known malady that the financial establishments were exploiting the weaker sections of the society. Hence, sections 3, 5 and 8 are intended to assure a checkmate on the abuse of the tactics adopted by the financial establishments and we do not see any arbitrariness or unreasonableness or violation of Articles 14, 19(1)(g) and 21 of the Constitution of India.

37.1. We hold,

a. The cardinal principles of natural justice are not violated;

b. There is no arbitrariness or unreasonableness in the procedure prescribed under Sections 3, 5 and 8 of the Act, nor there is unguided power conferred on the competent authority or the Special Court in this regard; and

c. There is no violation to Articles 14, 19(1)(g) and 21 of the Constitution of India.

37.2. In view of the above, issue (i) is answered in the affirmative.

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VIII – Issue (ii) – Question of Legislative Competency

38. Having discussed in detail the object and reasons for enacting the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, and the grounds of vires challenged, viz., test of reasonableness, arbitrary exercise of unguided powers conferred, and violation of principles of natural justice as well as the infringement of the fundamental rights conferred under Articles 14, 19(1)(g) and 21 of the Constitution of India, and held that the Act stands the test of reasonableness, and does not violate the principles of natural justice, Articles 14, 19(1)(g) and 21 of the Constitution of India, now, we pass on to the next but, fundamental conflict, viz., whether the Tamil Nadu Government has legislative competence to enact the impugned Tamil Nadu Act?

VIII-A. VIJAY C.PULJAL V.STATE OF MAHARASHTRA,
(2005 (4) CTC 705) - (THE MAHARASHTRA ACT)

39.1 The spinal cord of the contentions made on behalf of the petitioners/financial establishments is based on the decision of the Full Bench of the Bombay High Court in Vijay C.Puljal v. State of Maharashtra, referred supra, whereunder Maharashtra Act was dealt with. The objects and reasons of the Maharashtra Act are stated as follows:

> "There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these establishments is of grabbing money received as deposits from public, mostly middle class and poor, on the promises of unprecedented high attractive interest, rates of interest or rewards and without any obligation to refund the deposits to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on public. As such, deposits run into crores of rupees. It has resulted in great public resentment and uproar creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to make a suitable legislation, in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharshtra."
>
> (emphasis supplied)

39.2. The Full Bench of the Bombay High Court in Vijay C.Puljal v. State of Maharashtra, referred supra, held the Maharashtra Act as ultra vires for want of legislative competency of the State of Maharashtra, of course following the decisions of the Apex Court in (i) Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra, whereunder Section 58A of Companies Act, 1956 and Rule 3A of Companies (Acceptance of Deposits) Rules, 1975, were held constitutionally valid; and (ii) Velayuidhan Achari, T. v. Union of India, referred supra affirming the reasoning in the decision of the Delhi High Court

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in Kanta Mehta v. Union of India, referred supra, in which Section 45S and 58B (5A) of the Reserve Bank of India Act, 1934 were held as constitutionally valid.

39.3. Even though there may be some differences between the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 and the Maharashtra Act, in our considered opinion, the same are negligible and do not matter much for the purpose of testing the legislative competency of the State in enacting Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, in view of the statement of reasons and objects and the overall scheme of both the Acts. Therefore, it is appropriate to straight away refer to the decision of the Full Bench of the Bombay High Court in Vijay C.Puljal v. State of Maharashtra, referred supra:

> " 33.This is not a case where a state law is essentially and in substance with respect to a matter in the State List. Were it to be, an incidental encroachment on a subject reserved for the Union would not have risked attracting the vice of unconstitutionality. The substance of legislation determines constitutionality. An incidental trenching on a subject not reserved to the States is permitted when the substance still is within the purview of the owner of the State. What is incidental is not of constitutional significance; this is so not because the incident is an aberration but because the incident is not of such overarching significance as to be determinative of the true character of the law. Subjects of legislative power are not defined by boundaries constructed with iron fences. The boundaries are open textured and porous; in their peripheries they may possess common attributes or characteristics. The vice of the State law in this case is that its core has transgressed into a field reserved for Parliament. The transgression of the core into the Parliamentary domain is ever clearer when one has regard to legislation enacted by Parliament. In relation to corporate entities, the State law penalises a species of default - a fraudulent failure to repay - which is clearly within the purview of the sanctions imposed by the Companies Act, 1956. The State law regulates by imposing penal sanctions on transactions which Parliament has regulated by the imposition of sanctions. The penalties which the State law envisages are at variance with what Parliament envisaged. Provisions have been made in the State law for attachment, realisation and equitable distribution of assets among depositors. There are provisions for tracing assets and for the avoidance of mala fide transfers. The State government submits that Parliamentary legislation was deficient and the law had to be armed with teeth to reach out to and penalise wrong doing. This lies outside the competence of the States where the subject of the legislation is with respect to an entry in the Union List. The deficiencies that are perceived in Parliamentary Legislation have to be corrected by Parliament. The State legislature cannot arrogate to itself the power to supplant, or for that matter, supplement Parliamentary legislation on an area in the Union List. That is what in effect the State Legislature has done here on the

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logic that Parliament has not been adequate in its enactment. That logic is not constitutionally sound in our federal policy.

34.Public order is a subject that is reserved to the States in our constitutional scheme. It may appear tautological to say that legislation on public order must in substance be based upon public order. The point is of significance because numerous problems of law enforcement and of maintaining public order have their genesis in diverse and complex societal issues. If the State, in the process of enacting legislation on public order, were to legislate by regulating substantive areas which fall in the Union List, that would lead to the destruction of the basic scheme envisaged in the distribution of legislative powers. Legislation on public order must address public order. Otherwise, in the guise of legislating on public order,substantive areas which are reserved to Parliament in the Union List would be subject to regulation by the States. This is impermissible. A law on public order must truly and essentially address itself to the preservation and maintenance of public order. That is not what the State law does in the present case. The essential nature of the State law in the present case is not public order, but subjects which fall within the Union List.

35. In these circumstances, we hold that :

(i) The provisions of Section 58A of the Companies Act, 1956 have been upheld by the Supreme Court in Delhi Cloth and General Mills Co. Ltd. vs. Union of India,(1983) 4 SCC 166. The provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were upheld by the Delhi High Court in Kanta Mehta vs. Union of India, 62 Com. Cases 771. The judgment of the Delhi High Court is affirmed by the Supreme Court in T.Velayudhan Achari vs. Union of India, (1993) 2 SCC 582;

(ii) The Supreme Court held that Parliament has legislative competence to enact Section 58A of the Companies Act, 1956 and that the provision was relatable to the legislative heads contained in Entries 43 and 44 of List I of the Seventh Schedule. The same principle of law must apply to the subsequent amendments to the Companies Act, 1956 by which the provisions of Section 58AA and Section 58AAA were introduced;

(iii)The legislative competence of Parliament to enact Chapter III-C of the Reserve Bank of India Act, 1934 was upheld by the Delhi High Court with reference to the provisions of Entry 45 of List I and at any rate with reference to Entry 97 of List I. The reasoning of the Delhi High Court has been affirmed by the Supreme Court. Hence, it would not be possible for this Court to hold that legislation regulating deposits in relation to unincorporated entities and individuals, is referable to a legislative head in the State List;

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(iv) The legislation enacted by the State Legislature in the present case directly conflicts with the provisions contained in the Central Legislation. The ingredients of the offence of fraudulent default in the repayment of the deposits as created in Section 3 of the State Act squarely fall within the provisions of Section 58A and Section 58AA. The State Legislature has created an offence in respect of the same subject matter and providing for different punishments;

(v) The law enacted by the State Legislature is in pith and substance referable to legislative heads contained in List I of the Seventh Schedule. The essential character of the legislation is not with reference to public order.

(vi) The State Legislature has in the present case enacted a law which it was not competent to enact.

36. The State Legislation in the present case, namely, the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999, is accordingly declared to be ultra vires."

(emphasis supplied)

39.4. But, with respect, we are not in a position to agree with the reasons that weighed the Full Bench of the Bombay High Court for holding that the State Government has no legislative competency to enact the Tamil Nadu Act, in the public interest and in order to regulate the activities of the financial establishments.

VIII-B. THE PRINCIPLES GOVERNING THE TEST OF LEGISLATIVE COMPETENCY

40. Before considering the conflicting contentions made on behalf of both sides, it is the necessity of judicious prudence to refer the well settled principles governing the test of legislative competency.

41. Undoubtedly, the Indian Constitution provides plenary power of legislation to the legislatures whether Union or State, in spite of division of legislative powers mentioned in the Entries in the Lists conferring respective powers on the Union and the States. But, such legislative powers of the Union and States also often overlap and consequently, create a conflict regarding the legislative competency. It is, under such circumstances, the Court is shouldered with responsibility to examine the legislation in question in its pith and substance.

42. It inevitably happens, time and again, that the legislation though purports to deal with a subject in one List, also touches a subject in another List when the different provisions of the enactment are so closely intertwined. The blind adherence to a strictly verbal interpretation would result in

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declaring the statutes invalid, because the legislature enacting them may appear to have legislated in a forbidden sphere [vide. Subramanyam Chettiar v. Muthuswami Gounder (1940) FCR 188 at 201: AIR 1941 FC 47]. Therefore, the rule of interpretation requires a closer examination of the nature of the legislation for the purpose of determining the competency of the power of legislation. In the process, it is to be remembered that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.

43. The Constitution of India deserves to be interpreted, language permitting, in a manner that it does not whittle down the powers of the State Legislature and preserves the federalism while also upholding the Central supremacy as contemplated by some of its articles [vide: ITC v. Agricultural Produce Market Committee, (2002) 9 SCC 232].

44. In the instant case, we are posed with a lis that requires interpretation of entries in the mutually exclusive Union and State lists referred to above. While the petitioners/ financial establishments, contend that the impugned Tamil Nadu Act falls under Entries 42, 43 and 45 of List-I (Union), the State Government contends that the field of legislation of the impugned enactment is traceable to Entries 1, 30 and 32 of List II (State), which is dealt with in the latter paragraphs. Such an issue involves a determination whether a law purporting to be made under one or more entries in an authorised and exclusive list, is, in fact, a legislature under one or more entries in the forbidden list.

VIII-B(a). ARTICLES 245 AND 246 OF THE CONSTITUTION OF INDIA

45. At this juncture, it is relevant to quote Articles 245 and 246 of the Constitution of India:

> "Article 245. Extent of laws made by Parliament and by the Legislature of States.- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
>
> Article 246. Subject-matter of laws made by Parliament and by the legislatures of States.- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")
>
> (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the maters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")

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(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List")

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

46.1. Article 246 sets out the distribution of field of legislation between the Union and the States in mutually exclusive lists, List I (Union), List II (State) and List-III (Concurrent).

46.2. Clause (1) of Article 246 of the Constitution does not provide for the competence of Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Each entry in the legislative lists of the Seventh Schedule to the Constitution has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner as to uphold both of them and only in a case where it is found that both cannot coexist, the State Act may be declared ultra vires. Furthermore, the courts should proceed to construe a statute with a view to uphold its constitutionality. Only to the extent of conflict, the State law has to be struck down and not otherwise. [vide: State of A.P. v. K.Purushotham Reddy (2003) 9 SCC 564].

46.3. Clauses 1 and 3 of Article 246 enact that Parliament and the legislature of a State have exclusive power to make laws with respect to any of the matters enumerated in Lists I and II respectively. Article 246(1) fortifies such exclusive legislative power of Parliament (to make laws with respect to any matter enumerated in List I) with a non-obstante provision (a paramountcy provision), qua clauses (2) and (3) of article 246. Article 246(3) consecrates exclusive legislative power to the Legislature of a State in respect of matters enumerated in List II, subject to clauses 1 and 2.

47. From the scheme of the distribution of the legislative powers between the Union and the States in the mutually exclusive lists, it is clear that the power of the Parliament and the legislature of a State to make laws with respect to any of the matters in List I and List II of the VII Schedule is exclusive. No doubt, the abstinence of Parliament or a legislature of a State from legislating to the full limits of its power would not have the effect of transferring to the other legislative body the legislative power exclusively assigned to a legislature. It is also true that the inherent corollary of such exclusivity is that if a parliament or legislature of a State fails to legislate at all or to full limits of its power, such failures does not have the effect of augmenting the powers of the other level of Government. This is the true meaning and effect of the exclusivity in the distribution of the

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legislative powers enumerated in List I and II. The constitution does not countenance the delegation of legislative powers, either expressly or by abstinence in exercise of the legislative powers by appropriate legislature.

48. However, in respect of the matters enumerated in the concurrent List, it is possible that the laws made by the Union and State could co-exist. In the distribution of legislative powers under the Concurrent List (List III), Article 246(2) enacts that notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in the Concurrent list. But, the conflict arose under such circumstance can be resolved by a doctrine of occupied field or repugnancy taking recourse under Article 254 of the Constitution of India, as, Article 254 sets out principles for resolution of conflicts relating to inconsistency between the laws made by Parliament and the laws made by the Legislature of a State, with respect to matters enumerated in the Concurrent list.

VIII-B(b). THE CONCEPT OF OCCUPIED FIELD

49.1. The concept of occupied field is relevant in the case of laws made with reference to entries in List III. The doctrine of covered field has to be applied only to the entries in List III. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. [vide:Hindustan Lever v. State of Maharashtra,(2004) 9 SCC 438].

49.2. No doubt, experience of past difficulties has made the provisions of the Indian Act more exact in some particulars and the existence of the concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But, the overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap; and where they do, the question must be asked, what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with [Prafulla Kumar v. Bank of Commerce, Khulna, 74 I.A. 23: (1947) FCR 28: (1947) FCJ 34: (1947) 2 MLJ 6: AIR 1947 PC 60 at 65].

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VIII-B(c). LIBERAL AND HARMONIOUS CONSTRUCTION

50. It is a well settled law that the matters enumerated in several entries in the List in VII Schedule are not powers but fields of legislation and liberal construction must be put on them.

51.1. The other rule of interpretation is that the competing entries must be read harmoniously. To avoid conflict, the entries must be read together and interpreted together having due regard to the fact that the language of one entry defines the contours of the other.

51.2. The overlapping of fields of legislation occurs for variety of reasons. A subject of legislation of wide scope may be divided between Union and State fields on account of which it would be impossible to prevent overlapping by a clear cut division. The overlapping also occurs in several cases where exclusive field is in favour of the State, but the same is made subject to an exclusive field carved out which is reserved in favour of the Union. When it appears to the court that there is apparent overlapping between the two entries the doctrine of pith and substance has to be applied to find out the true nature of a legislation and the entry within which it would fall. It is only when an apparent overlapping occurs that the doctrine of pith and substance has to be applied to find out the true nature of legislation and the entry within which it would fall. When different entries in the same list crop up for consideration, the usual principle followed is that each particular entry should relate to a separate subject or group of subjects and every attempt should be made to harmonise different entries and to discard a construction which will render any of the entries ineffective. [vide: ITC Ltd. v. Agricultural Produce Market Committee,(2002) 9 SCC 232].

VIII-B(d). APPLICATION OF THE DOCTRINE OF PITH AND SUBSTANCE, THE DOCTRINE OF ANCILLARY AND INCIDENTAL TRENCHING AND THE DOCTRINE OF ECLIPSE

52. The conflicts that arise due to overlapping Entries could be resolved by application of,

(i) the doctrine of pith and substance,

(ii) the doctrine of ancillary and incidental trenching, and

(iii) the doctrine of eclipse.

By the Doctrine of pith and substance the true nature of the legislation could be identified and the same aids to classify the legislation for its allocation to a specific field of enumerated legislative powers. The Doctrine of ancillary and incidental trenching, accords and enables flexibility and pragmatism to the structure of the division of exclusive powers while providing a check against a

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clear usurpation of power to an extent that disturbs the carefully constructed constitutional plan of federal balance.

53.1. One of the proven methods of examining the legislative competence of an enactment is therefore, by the application of doctrine of pith and substance. Of course, in this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State under the constitutional scheme. If the objects stated in the enactment were to be the sole criteria for judging the true nature of the enactment, then judging by its preamble, the impugned enactment would satisfy the requirement on application of the doctrine of pith and substance to establish the State's legislative competence; but that is not the sole criterion. Therefore, the Court will have to examine not only the object of the Act as stated in the statute but also its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State [vide: E.V. Chinnaiah v. State of A.P., (2005) 1 SCC 394].

53.2. Of course, it should be assured that the impugned provision does not cross the bounds of relevant entry in List II of Schedule VII and is intra vires. So long as the State Act remains within the ambit of List II and does not offend the provisions of Article 246 of the Constitution of India or the laws made thereunder, the State Act's validity is beyond question. [vide: State of W.B. v. Purvi Communication (P) Ltd.(2005) 3 SCC 711].

54.1. Incidental trenching in exercise of ancillary powers into a forbidden legislative territory is permitted as a matter of privileged encroachment not amounting to usurpation.

54.2. The doctrine of incidental and ancillary powers simply means that each head of legislative power, whether Union or State, authorises all provisions that have a rational connection to the exercise of that head of power. If the apparent trenching into a prohibited field is not a camouflage, or the trenching is a serious usurpation of the forbidden legislative territory, or such trenching does not gravely intrude or derogatorily impact the effective exercise of legislative power by the other and appropriately authorised level of Government, the trenching would be termed incidental and therefore, such trenching would not, by itself, invalidate the legislation.

55. It is a settled law that laws made in derogation or in excess of that power would be ab initio void wholly or to the extent of the contravention as the case may be. Of course, the Doctrine of Eclipse can be invoked in the case of a law valid, but still a shadow is cast on it by supervening constitutional inconsistency or supervening existing statutory inconsistency; however, when the shadow is removed, the impugned Act is freed from all blemish or infirmity.

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56.1. The doctrine of pith and substance, however, is taken recourse to when examining the constitutionality of an Act with respect to competing legislative competence of Parliament and the State Legislature qua the subject-matter. Ascertainment of pith and substance is synonymous to ascertainment of true nature and character of the legislative competence necessitated for the purpose of determining whether it is a legislation with respect to one of the matters of the list. Human expression and fallibility of legal draftsmanship cannot be lost sight of. [vide: State of W.B. v. Kesoram Industries Ltd. (2004)10 SCC 201]

56.2. Furthermore, unless there exists any enactment under the rival List, the question of repugnancy and occupied field does not arise.

57. Sharp and distinct lines of demarkation are not always possible and it is almost impossible to prevent certain amount of overlapping. To avoid such difficulties, we have to look at the legislation as a whole and to presume that the legislature has full and exhaustive power to legislate the matters in the respective list as well as the Concurrent list. The rules generally would be,

(a) the Union will have the full and extensive power over the matters in List I and also have power to legislate with respect to the matters in List III;

(b) the State Legislature has exclusive power to legislate in the matter of List II, minus the matters listing in Lists I and III, if there is already an enactment legislated by the Union;

(c) the State will have the concurrent power to legislate the subject matter in List III, minus matters falling in List I; and

(d) therefore, the dominant position of the Union Legislature with respect to the subject matter in List I and List III is thus established, but the rigour of this interpretation is relaxed by the use of the words "with respect to", which signifies pith and substance and do not forbid a mere incidental encroachment. Therefore, an incidental encroachment is permissible. [vide I.T.C. Ltd. v. State of Karnataka, 1985 Supp SCC 476]

58. Concededly, the petitioners have not obtained any licence from the Reserve Bank of India. The petitioners are governed under the Reserve Bank of India Act, only if they obtain licences from the Reserve Bank of India under

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the provisions of the Banking Regulation Act, 1949 and therefore, it cannot be said that the field is occupied by the Reserve Bank of India Act, 1934 read with the provisions of the Banking Regulation Act. On the other hand, the impugned Act only aids the said Parliamentary Acts, viz., Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949 and does not in any manner whatsoever entrench thereupon.

59. To identify the dominant feature and the pith and substance of the law, all the tests are to be applied. These matters are not a mere technical or formalistic exercise. The court will look beyond the direct legal effects of the law to enquire into these factors, particularly in the case of social and economic legislation, as the one in hand. Because socio economic legislation must be considered more organic as a whole, but not as a mere collection of sections. It requires a more pragmatic approach rather than a pedantic.

60. The Court is also required to consider the effect of the statute. The effect in the sense is merely not legal effect, but the effect of the statute on the societal realities, more so, when it concerns with economics. Therefore, the Court should always restrain involving too deep into such subject matters, as the legislature are better persons to decide the need of the public.

61. Of course, the contra theory is of colorable legislation which means though apparently the legislature enacted the statute purported to act within the limits of its power had in substance and reality transgressed the limits of constitutional powers, the transgression being a camouflage by what appears on the appropriate examination to be a mere pretence and disguise. The doctrine against a colourable legislation is not concerned with the motive of legislation. It is in essence a question of vires or power of the legislature to enact the law in question.

62. The validity of an enactment has to be determined not with reference to the name and label of the statute, but with reference to the substance of the enactment, its true nature and character or its pith and substance, as it is called. The Court must look beyond the names, forms and appearance to discover the true character and nature of the legislation [vide: Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co., 1954 SCR 674 :AIR 1954 SC 119].

63.1. With these guidelines, we shall discuss the Doctrine of Pith and Substance in detail. We have already seen that in case of conflict between entries in List I and List II, the same has to be decided by application of the principle of pith and substance.

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63.2. The doctrine of pith and substance means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. In order to see whether a particular legislative provision falls within the jurisdiction of the legislature which has passed it, the Court must consider what constitutes in pith and substance the true subject-matter of the legislation and whether such subject-matter is covered by the topics enumerated in the legislative list pertaining to that legislature.

63.3. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. [vide: Union of India v. Shah Goverdhan L. Kabra Teachers' College,(2002) 8 SCC 228].

64. The Court has to ascertain the true nature and character of the enactment, i.e.,the result of the investigation, not the form alone. The legislation must be scrutinized in its entirety.

65.1. Then the questions that follow are, (i) whether the law claimed to be within the incidental or ancillary area of the authorised legislative field, substantially impact the essential area or the core of the exclusive legislative field of the other level of Government?; and (ii) whether the extent and degree of invasion would substantially impair the effective exercise of an extent or potential legislation by the other level of the Government?

65.2. The question of invasion into the territory of another legislature must be determined not by the degree but by substance, because the extent of invasion though forbidden, but not altogether. If an Act, when viewed substantially falls within the power of the legislature which enacted it, then it cannot be said to be invalid merely because it incidentally encroaches on the matter which has been assigned to another legislature [vide: State of Bombay v. Narottam Jethabhai AIR 1951 SC 99].

66. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of another legislature. This may result in a large number of statutes being declared unconstitutional, because the legislature enacting law

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may appear to have legislated in a field reserved for the other legislature. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. To examine whether a legislation has impinged on the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the courts have evolved the doctrine of pith and substance for the purpose of determining whether it is legislation with respect to matters in one list or the other. Therefore, for applying the principle of pith and substance regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions [vide:Bharat Hydro Power Corpn. Ltd. v. State of Assam,(2004) 2 SCC 553].

67. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the entry in the Union List. Conversely, the State Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation ultra vires the Constitution. When there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict. [vide: Special Reference No. 1 of 2001, In re, (2004) 4 SCC 489]

68. If the matter is within the exclusive competence of the State Legislature i.e. List II, then the Union Legislature is prohibited to make any law with regard to the same. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the State Legislatures.

69. In State of U.P. v. Synthetics and Chemicals Ltd. (1991)4 SCC 139, while dealing with the legislative competence of the U.P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation (Amendment) Act, 1976, as to whether it would fall under Entry 52 of list-I or under Entry 54 of List II, the Apex Court held that the control exercised by the Central Government by virtue of Section 18-G of the Industries (Development and Regulation) Act, 1951 is in a field far removed from the taxing power of the State under Entry 54 of List II and so long as the impugned legislation falls in pith and substance within the taxing field of the State, the control of the Central Government in exercise of its power under the Industries (Development and Regulation) Act, 1951 in respect of a controlled industry falling under Entry 52 of List I cannot in any manner prevent the State from imposing taxes on the sale or purchase of goods which are the products of such industry and which are referable to Entry 33 of List III.

70. It is trite that both the Acts can operate in their respective fields and there is no repugnancy if both the Acts are considered in the light of their respective true nature and character. While giving due weight to

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Centre's supremacy in the matters of legislation, the States' legitimate sphere of legislation should not be unnecessarily whittled down, because that would be unwarranted by the spirit and basic purpose of the constitutional division of powers; and all the entries should be construed in harmonious manner so as to avoid any conflict. In other words, only in case of conflict or collision or where there is a glaring repugnancy the very doctrine of occupied field will be attracted [vide: Rathinam v. State (2005(1) CTC 516 - in which one of us (P.D.Dinakaran,J.) was a party].

71.1. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject-matter of an entry.

71.2. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of Parliament as well as the State Legislature are expressed in precise and definite terms.

71.3. When a question arose for consideration before the Punjab & Haryana Court in Sant Sadhu Singh and others Vs. The State of Punjab and another contending that the Punjab legislature was incompetent to make a law pertaining to banking corporations and cooperative societies doing banking business are all banking corporations within the meaning of banking which comes within the Entry 43 and 45 of List I of VII Schedule, the Punjab & Haryana Court held that in order to give a harmonious construction to Entry 43 and 45 of List I of VII schedule, it must be interpreted that only the business of banking as such fell within the entry 45, whereas the incorporation, regulation and winding up of trading corporations including banking corporations fell within the ambit of entry 43 of List I. Since the cooperative societies were expressly excluded from the purview of entry 43 of List I, the law pertaining to the cooperative societies doing banking business have fallen under Entry 32 of list II.

72. The touch-stone for application of the doctrine of Pith and Substance, as observed earlier, is that while interpreting the conflicts between the Union and the State, an organic, but not pedantic approach of interpretation must guide the judicial process. The healing art of harmonious construction not the tempting game of hair splitting would alone promote the rhythm of rule of law, as every enactment is presumed to be constitutionally valid and it is only for the legislature to determine the urgent need of the public taking into consideration the societal realities and the public interest, and the Court should be more cautious in testing the enactment in the teeth of legislative competency, particularly, when the respective fields of legislation overlap with each other. Therefore, while applying the harmonious construction to

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reconcile the relevant entries of the respective Government, every attempt should be made to harmonise the apparently conflicting entries not only of different lists but also the same list and to reject the construction which would make the legislation nugatory.

73. When an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them.

74. In interpreting the scope of various entries in the legislative lists in the VII Schedule, widest-possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it. The entries should, thus be given a broad and comprehensive interpretation. [vide. State of Gujarat v. Akhil Gujarat Pravasi V.S.Mahamandal (2004) 5 SCC 155].

75. The primal principles justifying the competency of the respective Legislatures with respect to the entries concerned, therefore, are:

(i) Entries in each of the List must be given the most liberal and widest possible interpretation and no attempt should be made to narrow or whittle down the scope of the entries.
(ii) The application of the doctrine of pith and substance really means that where a legislation falls entirely within the scope of an entry within the competence of a State Legislature then this doctrine will apply and the Act will not be struck down.
(iii) If the entrenchment is minimal and does not affect the dominant part of some other entry, which is not within the competence of the State Legislature, the Act may be upheld as constitutionally valid.
(iv) The nature and character of the scope of the entries having regard to the touchstone of the provisions of Articles 245 and 246.
(v) The doctrine of occupied field has a great place in the interpretation as to whether or not a particular Legislature is competent to legislate on a particular entry. This means that when the field is completely occupied by List I, as in this case, then the State Legislature is wholly incompetent to legislate and no entrenchment or encroachment, minimal or otherwise, by a State Legislature is permitted. Where the field is not wholly occupied, then a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation.

These five principles have to be read and construed together and not in isolation. It is also well settled that where two Acts, one passed by the Parliament and the other by a State Legislature, collide and there is no question of harmonising them, then the Central legislation must prevail. [vide: I.T.C. Ltd. v. State of Karnataka, 1985 Supp SCC 476].

76.1. It is also an essential rule that, when the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute

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by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. To sustain the presumption of constitutionality, consideration may be had even to the matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. It is also permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied [vide Shashikant Laxman Kale v. Union of India, (1990) 4 SCC 366].

76.2. It is settled that in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation, vide Rama Krishna Dalmia v. Justice S.R.Tendolkar, AIR 1958 SC 538. The above principle has to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law and the said view was once again expressed by the Constitution Bench of the Apex Court in C. I. Emden v. State of U. P, AIR 1960 SC 548.

VIII-B(e). THE IMPUGNED TAMIL NADU ACT AND THE RELEVANT ENTRIES IN LISTS I, II AND III OF THE VII SCHEDULE TO THE CONSTITUTION OF INDIA

77.1 In this background, let us consider legislative competence of the Tamil Nadu Act.

77.2 The Tamil Nadu Act, according to the petitioners, deals with the subject coming under Entries 43, 44 and 45 of the Union List whereas the claim of the respondent/Government is that the Tamil Nadu Act is traceable to Entries 1, 30 and 32 of the State list, or in the alternative, traceable to Entries 1, 7 and 8 of the Concurrent List, which, for the sake of convenience, are extracted hereunder:

Union List – I

Entry 43	Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.
Entry 44	Incorporation, regulation and winding up of trading corporations, whether trading or not, with objects not confined to one State, but not including universities.
Entry 45	Banking
Entry 93	Offences against laws with respect to any of the matters in the List.
Entry 97	Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

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State List – II	
Entry 1	Public Order (but not including the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power.
Entry 30	Money-lending and money-lenders; relief of agricultural indebtedness.
Entry 32	Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies.
CONCURRENT LIST – III	
Entry 1	Criminal law, including all matters included in the Indian Penal Code at the commencement of the Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
Entry 7	Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
Entry 8	Actionable wrongs

VIII-B(f). THE IMPUGNED TAMIL NADU ACT WITH REFERENCE TO SECTION 58A OF COMPANIES ACT, 1956 AND SECTIONS 45S AND 58B(5A) AND 58B(5B) OF RESERVE BANK OF INDIA ACT, 1934

78. The main plank of argument advanced on behalf of the petitioners is that the subject matter of the impugned enactment, viz., "to regulate the activities of the financial establishments" falls within the field of legislation under Entries 43 and 44 of the Union List, referred to above. It is further contended that the field is already occupied by Section 58A of the Companies Act, 1956 and Rule 3A of the Companies (Acceptance of Deposits) Rules and in this regard reliance is placed on the decision of the Apex Court in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra.

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79. It is also emphasised, based on the decision of the Apex Court in Velayuidhan Achari, T. v. Union of India, referred supra, whereunder the view of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, that the subject matter of legislation impugned therein falls within the meaning of "banking", coming under the provisions of the Section 45S and 58B(5A) and 58B (5B) read with Section 45I of the Reserve Bank of India Act, 1934, and but for the facility of withdrawing by cheque or draft, the definition of "banking" in the Banking Regulation Act, 1949 would squarely govern the impugned business activities of the financial establishments.

80. The existing laws, namely Section 58A of the Companies Act, 1956, regulates the acceptance of the deposits and Section 45S of Reserve Bank of India Act, 1934 prohibits the acceptance of the deposits, and also prescribes suitable punishment and penalties for contravening the same, but, neither of the existing laws provide for regulating the activities of the financial establishments, which not only duped the innocent depositors and accepted deposits from them, but also siphoned of, diverted or transferred the funds mala fide. The existing laws do not provide for attachment of the properties that were procured either in the name of the Financial Establishments or in the name of any other person from and out of the deposits collected by the Financial Establishments, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, partner, director, manager or member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, nor provide for attachment of the properties of mala fide transferees, nor provide for sale of those properties attached and to distribute the sale proceeds equitably to the depositors. However, the impugned Act, under Sections 3 and 8 provides for attachment of properties of the financial establishments and persons mentioned in Section 3 and also malafide transferees, sale as well as equitable distribution among the depositors, in the interest of the public at large. Therefore, it cannot be stated that the impugned Act attempts to supplant or supplement parliamentary legislation and seeks to cure the deficiencies in the parliamentary legislations, viz., Companies Act, 1956 or Reserve Bank of India Act, 1934. Therefore, the contention that the shortfall or the deficiency in the parliamentary legislation cannot be cured by the Tamil Nadu Act is not sustainable.

81. Similarly, since the object of the impugned enactment is not the same as that intended under Section 58A of the Companies Act, 1956 and under Section 45S of the Reserve Bank of India Act, 1934, the penalties envisaged under those Acts for any contravention cannot either be compared or contrasted with the penalties prescribed in the impugned enactment, because, in substance, the object of the impugned legislation is, by and large, different from that intended under Section 58A of the Companies Act, 1956 and Section 45S of the Reserve Bank of India Act, 1934. Section 58A of the Companies Act, 1956 is

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intended to regulate the acceptance of public deposits and Section 45S of the Reserve Bank of India Act, 1934 is intended to prohibit acceptance of the same. But, the Tamil Nadu Act is intended to regulate the activities of the financial establishments and to find a solution to the problem of the depositors, by due process of law, so that the dues payable to the depositors can be realised.

82. Superficially, it may appear that the impugned subject matter is in substance covered under Entries 43, 44 and 45 of List I, but both in reality and in logic, it is not so. Even though it incidentally trenches on the subjects reserved for the Central legislation, occupied by the Companies Act, 1956 and Reserve Bank of India Act, 1934 to certain extent, it cannot be said that the State has no legislative competency to enact the impugned Tamil Nadu Act, as it is well settled that incidental trenching is permissible in law and the impugned Act, if understood in pith and substance, is for the recovery of the amount due to the depositors in the interest of the public at large, which we shall deal with in detail latter.

VIII-B(g). THE IMPUGNED TAMIL NADU ACT AND SECTIONS 45S AND 58B(5A) OF RESERVE BANK OF INDIA ACT, WITH REFERENCE TO THE DECISION IN KANTA MEHTA V. UNION OF INDIA CASE AND VELAYUIDHAN ACHARI, T. V. UNION OF INDIA CASE

83. According to the petitioners, the impugned subject matter being "banking", falls within the field of legislation of the Union Government under Entry 45 of List I of the VII Schedule. In this regard, the petitioners rely on the decision of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, whereunder, while upholding the constitutional validity of Section 45S read with 58B(5A) of the Reserve Bank of India At, 1934, it was held that the business of accepting the deposits is "banking" and the impugned provision is not violative of Articles 14 and 19 of the Constitution of India. It was also brought to our notice that the view of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, was subsequently confirmed by the Apex Court in Velayuidhan Achari, T. v. Union of India, referred supra.

84. Before analyzing the contentions made on behalf of the petitioners, in the light of the decisions in Kanta Mehta v. Union of India, referred supra and Velayuidhan Achari, T. v. Union of India, referred supra, in this regard, we propose to refer Sections 45I, 45MB, 45S, 58B(5A) and 58B(5B) of the Reserve Bank of India Act, 1934, which read as follows:

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" 45-I. Definitions

In this chapter, unless the context otherwise requires-

(a) "business of a non-banking financial institution" means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in

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clause (f);

(aa) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes a foreign company within the meaning of section 591 of that Act;

(b) "corporation" means a corporation incorporated by an Act of any Legislature;

(bb) "deposit" includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but does not include,-

(i) amounts raised by way of share capital;

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(iv) any amount received from,-

(a) ***

(b) a State Financial Corporation,

(c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964 (18 of 1964), or

(d) any other institution that may be specified by the Bank in this behalf;

(v) amounts received in the ordinary course of business, by way of-

(a) security deposit,

(b) dealership deposit,

(c) earnest money, or

(d) advance against orders for goods, properties or services;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and

(vii) any amount received by way of subscriptions in respect of a chit.

Explanation I: "Chit" has the meaning assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982 (40 of 1982).

Explanation II: Any credit given by a seller to a buyer on

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the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;

(c) "financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely :-

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972 (26 of 1972);

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,-

(a) agricultural operations; or

(aa) industrial activity; or;

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

Explanation : For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(d) "firm" means a firm as defined in the Indian Partnership Act, 1932;

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(e) "non-banking institution" means a company, corporation or co-operative society.

(f) "non-banking financial company" means-

(i) a financial institution which is a company;

(ii) a non banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending Tiny manner;

(iii) such other non-banking institution or class of such institutions, as the bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

45MB. Power of bank to prohibit acceptance of deposit and alienation of assets:

(1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the bank under any of the provisions of this Chapter, the bank may prohibit the non-banking financial company from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the bank for such period not exceeding six months from the date of the order

45S. Deposits not to be accepted in certain cases

(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit-

(i) if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner:

PROVIDED that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any

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of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

(2) Where any person referred to in sub-section (1) holds any deposit on the lst day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier:

PROVIDED that if the bank is satisfied on an application made by any person to the bank that such person is unable to pay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

(3) On and from the lst day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation: For the purposes of this section, a person shall be deemed to be a relative of another if, and only if-

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the List of relatives below:

List of relatives

1. Father, 2. Mother (including step-mother), 3. Son (including step-son), 4. Son's wife, 5. Daughter (including step-daughter), 6.Father's father, 7. Father's mother,8. Mother's mother,9. Mother's father,10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18.Daughter's daughter's husband, 19. Brother (including step-brother), 20. Brother's wife, 21, Sister (including step-sister), 22. Sister's husband.

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58B. Penalties:

(1) to (4) ***

(5) .....

(5A) If any person contravenes any provision of section 45S, he

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shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more, or with both:

PROVIDED that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.

(5B) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to impose a sentence of fine in excess of the limit specified in that section on any person convicted under sub-section (5A).

(emphasis supplied)

85. Finding the then existing enactments relating to the Banks did not provide control over the companies or institutions, which, although they are not treated as Banks, accept from the general public or carry on any other business which is allied to banking, the Union of India by Amendment Act 55 of 1963, in order to ensure more effective supervision and management of monetary and credit system of the Reserve Bank of India, as a central banking institution of the country, desired that the Reserve Bank of India should be enabled to regulate the conditions on which the deposits may be accepted by these non-banking companies and institutions and thus empowered the Reserve Bank of India to give necessary directions to any financial institution or institutions. Then the activities of the non-banking institutions and unincorporated bodies receiving deposits are by Amendment Act 23 of 1997 regulated in terms of the provisions in Chapter IIIB and IIIC of the Reserve Bank of India Act, 1934 respectively. While thus regulating the receipt of deposits by non-banking financial companies, the Reserve Bank of India prohibited the acceptance of deposits by the non-banking financial companies. Similarly, unincorporated bodies have also been totally prohibited from accepting deposits for the purpose other than personal use. Accordingly, the unincorporated bodies have been specifically prohibited from issuing any advertisement in any form for the acceptance of deposits. But still, there were reports that several financial companies and unincorporated bodies had failed to comply with such directions and repay the deposits collected from unsuspecting depositors, who had been tempted by attractive returns and incentives offered. In this backdrop, the above said directions were inserted in Section 45S of the Reserve Bank of India Act, 1934.

86.1. Even though the word "bank" is defined under Section 2(aii) of the Reserve Bank of India Act, 1934 to mean the Reserve Bank of India constituted by this Act, there is no definition for "banking" in the Reserve Bank of India Act, 1934. However, "banking" and "banking company" are defined in Banking Regulation Act, 1949 as follows:

"Section:5. Interpretation. In this Act, unless there is anything

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repugnant in the subject or context,

(a) ...

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in India."

86.2. The Banking Regulation Act, 1949 is intended to consolidate the law relating to banking. While the primary object of the Company Law is to safeguard the interest of the stake holders, that of the Banking Regulation Act, 1949 is to protect the interest of the depositors. The comprehensive definition of "banking" defined in the Banking Regulation Act, 1949 is, therefore, intended to bring within the scope of the legislation all institutions which receive deposits, repayable on demand or otherwise, for lending or investment; prohibiting non-banking companies from accepting deposits repayable on demand; prohibiting trading with a view to eliminate non-banking risks; empowering Central Government to take action against the banks conducting their affairs in a manner detrimental to the interest of the depositors; widening the powers of the Reserve Bank of India so as to enable it to come to aid to banking companies in times of emergency, etc.

86.3. As per Section 7 of the Banking Regulation Act, 1949 no company, other than a banking company shall use as a part of its name, or in connection with its business, any of the words "bank" or "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words, and as per Section 7(2) no firm or individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words "bank" or "banker" or "banking".

86.4. Section 10BB of the Banking Regulation Act, 1949 empowers the Reserve Bank of India to appoint a Chairman of the Board of Directors, on a whole-time or part-time basis, for managing the affairs of banking company.

86.5. Section 21 of the Banking Regulation Act, 1949 empowers the Reserve Bank of India to control the advances by banking companies. Section 22 of the Banking Regulation Act, 1949 provides that unless a license is issued by the Reserve Bank of India, no company shall carry on the banking business in India.

86.6. Section 35 of the Banking Regulation Act, 1949 empowers the Reserve Bank of India to cause an inspection of any banking company or its books and accounts. Section 35A of the Banking Regulation Act, 1949 empowers the Reserve Bank of India, if satisfied in the public interest or in the interest of the banking policy, that the conduct of the banking company is prejudicial to the interest of the banking company, and if it is necessary to secure proper management of the banking company and to issue necessary directions, as it may deem fit. Under section 36 of the Banking Regulation Act, 1949 the Reserve Bank of India is vested with residue powers mentioned therein to have a control

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on the banking companies. Section 36AA empowers the Reserve Bank of India to remove the managerial and other persons from office and Section 36AB empowers the Reserve Bank of India to appoint the additional directors.

86.7. It is, therefore, clear that by virtue of the provisions of the Banking Regulation Act, 1949 all the banking companies are brought under the direct control of the Reserve Bank of India and no banking company shall conduct a business in banking without the license of the Reserve Bank of India. The provisions of the Banking Regulation Act, 1949 shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Companies Act, 1956, and any other law for the time being in force. Therefore, no company whether incorporated or unincorporated can undertake a business in banking without the license of Reserve Bank of India and concededly, none of the petitioners have obtained any license from the Reserve Bank of India.

87.1. With this backdrop, we propose to deal with the provisions of the Reserve Bank of India Act, 1934, referred to above. Whether the petitioners would come under the definition of "financial institution" defined under Section 45I(c) or "the firm" under Section 45I(d) or "non-banking institutions" under Section 45I(e) or "non-banking finance company" under Section 45I(f), there is a clear prohibition under Section 45MB of the Reserve Bank of India Act for acceptance of the deposit and alienation of the assets. Even in the case of unincorporated bodies there is prohibition of acceptance of deposits as per Section 45S of the Reserve Bank of India Act, 1934.

87.2. Section 58B of the Reserve Bank of India Act, 1934 prescribes penalties to be imposed and Section 58C of the Reserve Bank of India Act, 1934 deals with the offences by the companies and section 58G, deals with fine being imposed.

87.3. A careful reading of all the above provisions of the Act, makes it clear that the provisions of the Reserve Bank of India Act, 1934 prohibit any person, whether individual, corporation, incorporated company under the Companies Act, 1956 from accepting deposits, whereas the provisions of the Banking Regulation Act, 1949 contemplate license to be obtained from Reserve Bank of India for conducting the business of banking.

87.4. Admittedly, none of the petitioners have obtained any license from Reserve Bank of India. None of the petitioners satisfy the definition of "banking" in the Banking Regulation Act, 1949, as there is no provision in their business for withdrawal of amount by cheque, draft, order or otherwise. Therefore, the business of accepting the deposits cannot fall within the meaning of "banking" defined under the Banking Regulation Act, 1949.

87.5. The powers conferred on the Reserve Bank of India to give necessary direction to remove, change or appoint the directors and to give suitable directions, including the power to take appropriate penal action against those who violate the prohibition to accept public deposits are all, in our

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considered opinion, not a remedy to the depositors. Those provisions may be an answer to check the big black money bosses, but will not in any way be a remedy to the loss of the poor depositors, who deserve the protection of the State by appropriate legislation. Therefore, as there is no effective remedy in the Central legislation to regulate and control either incorporated or unincorporated companies in the matter of depositors, who have deposited their hard earned money with the financial establishments, the State Government is competent enough to bring out impugned legislation to suit the need of the public, to protect the interest of the depositors as well as in the public interest.

87.6. Similarly, neither the prohibition, prohibiting the non-banking companies from accepting the deposits, nor the direction not to sell, not to transfer, nor to create a charge or mortgage or deal in any manner with the property and assets without prior permission of the Reserve Bank of India for a period not exceeding six months from the date of the prohibition order under Section 45MB of the Reserve Bank of India Act, 1934, can be a solution for the grievance of the aggrieved depositors.

88.1. The introduction of Section 45S read with Section 58B(5A) of the Reserve Bank of India Act, 1934 was challenged in Kanta Mehta v. Union of India, referred supra, on the ground of legislative competency and for violation of Articles 14 and 19 of the Constitution of India before the Division Bench of the Delhi High Court. It was contended therein that the impugned provisions would fall under Entry 30 or 32 of List II of VII Schedule, but not within the Entry 45 or 97 of the List I of VII Schedule. But, the Division Bench of Delhi High Court held that the acceptance of the public deposits by any person, whether individual or firm or unincorporated association of individuals would mean "banking" and therefore, the parliament has legislative competency to enact Section 45S and 58B(5A) of Chapter IIIC of the Reserve Bank of India Act, 1934.

88.2. Accordingly, the Division Bench of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, held that the business of acceptance of deposits from public comes within the meaning of "banking", taking into consideration the object of the Reserve Bank of India Act, 1934, namely, bringing the activities of the non-banking financial companies and unincorporated corporations within the purview of the Reserve Bank of India Act, 1934.

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88.3. It also held that the provision made under Section 45S of the Reserve Bank of India Act, 1934 for a reasonable restriction in the matter of accepting deposits is not violative of Articles 14 and 19 of the Constitution of India and the said view of the Division Bench of the Delhi High Court was affirmed by the Apex Court in Velayuidhan Achari, T. v. Union of India, referred supra.

88.4. The reasons that weighed the Division Bench of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, to hold that Section 45S of

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the Reserve Bank of India Act, 1934 does not suffer any legislative competency are that, the courts must presume that the legislature best understands the needs and complexities of any social evil; the legislature must be allowed free play of choice to select the best course it deems fit; the Courts are concerned with the constitutionality of the legislation; even though the question of constitutionality and validity of the legislation are certainly within the domain of the Court, the Court shall not permit any trespass on a field forbidden to the legislation; and in examining the necessity of economic legislation, the Court should be prepared to accept the reality that weighed the legislature.

88.5. However, where no license has been obtained from Reserve Bank of India, as in the instant case, the question of applicability as well as violation of the directions issued under Section 45S of the Reserve Bank of India Act, 1934 by Reserve Bank of India remains silent and unanswered. Further, the power of the Reserve Bank of India to undertake a periodical inspection in such cases and to proceed further in the matter will not be sufficient to safeguard the interest of the depositors, which has assumed greater importance under a vulnerable situation, where unhealthy features and malpractices have come to surface in acceptance of deposits from the innocent public promising higher rate of interest, even though the same is not commercially viable, which necessitated the legislature to undertake great pains to find suitable machinery for the recovery.

88.6. Therefore, even though the Reserve Bank of India Act, 1934 prohibits acceptance of deposits and prescribes the penalty for any violation of the provisions of the Act, enabling the Court to pass appropriate punishment, there is no provision or mechanism for attaching the properties of financial establishments and the properties of the mala fide transferees, bringing the same for sale and disbursing the sale proceeds among the depositors equitably.

88.7. That apart, in GANESH BANK KURUNDWAD LTD. V. THE UNION OF INDIA & OTHERS, JT 2006 (8) SC 132, the Apex Court has held that in order to be a "banking company" within the meaning of Section 45S of the Reserve Bank of India Act, 1934 and to do the business of "banking" defined under Section 5(b) of the Banking Regulation Act, 1949, the deposits accepted from the public should be repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise; and licence should have been obtained from the Reserve Bank of India. But, in the instant case, none of the above conditions is satisfied and therefore, the petitioners are not coming within the meaning of "banking" as defined under the Banking Regulation Act, 1949; nor the provisions of the Reserve Bank of India Act, 1934 provide any remedy for realization of the dues to the depositors. We are, therefore, of considered opinion that the Sections 45S and 58B(5A) of the Reserve Bank of India Act, 1934 cannot be a bar for the State to enact suitable legislation to protect the interest of lakhs of such aggrieved depositors.

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89. The absence of appropriate provision in the Reserve Bank of India Act, 1934 read with Banking Regulation Act, 1949 paves way for a genuine need to bring out the impugned socio economic legislation to find out a solution to the panic of depositors as the State cannot be a silent spectator to the menace of the poor depositors as the malpractice and the fraudulent commissions and omissions on the part of the financial establishments have increased shaking not only the very economy but also the social life of the middle and poor classes, or otherwise there would be disastrous consequences both in the economy and social life of such depositors who have been exploited on the false promise of higher rate of interest. The impugned legislation, therefore, was brought to salvage the economy and prevent further perversions.

90. An argument was advanced that the Reserve Bank of India is empowered to take appropriate action against such defaulted financial establishments and the inaction on the part of Reserve Bank of India in this regard cannot be a ground for the State Government to trespass into the field of legislation, but we are unable to agree with the same, as the Reserve Bank of India could not possibly be faulted for not looking into the alleged hardship faced by the depositors for the simple reason that, concededly, none of the petitioners had obtained licence from the Reserve Bank of India, nor the business of financial establishments in accepting deposits can be strictly construed to be banking as defined under the Banking Regulation Act, 1949.
However, any possible attempt of the financial establishments to escape from the clutches of Reserve Bank of India Act, 1934 with respect to the acceptance of the public deposit by not getting licence contemplated under the provisions of Banking Regulation Act, 1949 cannot be ruled out and therefore, the insertion of Section 45S or 58B(5A) of the Reserve Bank of India Act, 1934, whereunder there is no provision for realisation, cannot, by itself, be a solution to the aggrieved depositors.

91. The mere absence of exercise of such power conferred under section 58B (5A) or 58G of the Reserve Bank of India Act, 1934 cannot by itself invalidate the impugned legislation where the Government proposed to protect the interest of depositors, in the public interest and in order to regulate the activities of such financial establishments, which can, in our considered opinion, be traced within the field of legislation under Entries 1 and 32 of the List-II of VII Schedule to the Constitution of India.

92. As long as the field of legislation of the impugned Tamil Nadu Act is traceable to Entries 1 and 32 of the State List as well as Entry 7 of the Concurrent List, which we shall deal with later, the question of considering the deficiencies or lapses in the Central Enactments does not arise as the same is totally irrelevant for testing the legislative competency of the impugned Tamil Nadu Act enacted to provide a remedy for the vulnerable economic mischief of siphoning and diverting mala fide the funds of the depositors and the crudities and inequities that prevail in the State.

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93. Equally untenable is the contention that there is discriminatory exemption in the uniform operation of the Act in question, both in the case of the financial establishments which are regular in repayment and those who do not, because the very menace of not acquiring the required licence under the provisions of the Reserve Bank of India Act and collecting huge deposits from the depositors promising higher rate of interest, committing mismanagement and malpractice, siphoning of the funds, is writ at large receiving the attention of the State to bring out necessary enactment.

94. The very fact that these institutions are not accountable either under the Reserve Bank of India Act or under the Banking Regulations Act, these institutions have escaped themselves from the public control. Consequently, the State is wise and right in bringing an enactment to remove the mischief. We strongly find there is sufficient nexus between the action proposed and the object sought to be achieved, which ultimately boils out to maintain the public order.

95. On the other hand, by the impugned enactment, the State, not only proposed to attach the properties of the financial establishments and the persons mentioned in Section 3 of the Tamil Nadu Act and that of the mala fide transferees, but also provides for the sale of such properties under due process of law and then to distribute the sale proceeds equitably among the depositors. Therefore, neither the Doctrine of occupied field nor that of the repugnancy is attracted.

96. Thus, a conscious effort to give remedy to unwary depositors' is the theme of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. The depositors who are vulnerable to the temptation of earning high rate of interest were found victimized by these financial establishments fraudulently. The Government having seen the acute and distressing pain of the depositors has rightly come out with the legislation to protect their interest, so that their dues can be realised by following due process of law under the relevant provisions of the Tamil Nadu Act, as discussed above.

97. Of course, the impugned Act may incidentally trench by way of order of attachment on the powers of Reserve Bank of India conferred under Section 45MB of the Reserve Bank of India Act, 1934 which is permissible in law. In any event, such incidental infringement as well as repugnancy alleged is cured by the assent of the President obtained for the impugned enactment.

98. We have already held that the impugned legislation is neither arbitrary, nor discriminatory nor violative of the principles of natural justice, but, it is passed in the public interest and to regulate the activities of such financial establishments, which we intend to deal separately.

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99.1. Our attention was also brought to the decision in Velayuidhan Achari, T. v. Union of India, referred supra where the Apex Court confirming the view of the Division Bench of Delhi High Court in Kanta Mehta v. Union of India, referred supra, upheld the validity of sections 45S and 58B(5A) of the Reserve Bank of India Act, 1934 as that the same are not violative of Articles 14, 19(1)(g) and 21 of the of the Constitution of India.

99.2. In Velayuidhan Achari, T. v. Union of India, referred supra, the Apex Court placed reliance on the decision of R.K.Garg v. Union of India (1981 (4) SCC 675), whereunder it was held as follows:

> "Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud, 354 US 457; 1L ED 2d 1485(1957), where Frankfurter, J. said in his inimitable style:
>
> 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'
>
> The Court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry'; 'that exact wisdom and nice adaptation of remedy are not always possible' and that 'judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone

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it cannot be struck down as invalid."

At page 706, para 19 it is held:

"... That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, 'be resilient, not rigid, forward looking, not static, liberal, not verbal' and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v. Illinois, 94 US 113: 24 legislation Ed 77 (1875) namely, 'that courts do not substitute their social and economic beliefs for the judgment of legislative bodies'. The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Co. v. City of Chicago, 228 US 61:57 legislation Ed 730 (1912):

'The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review'."

(emphasis supplied)

99.3. Applying the very same rule of interpretation in testing the legislative competency of the State in enacting the present enactment, as the impugned legislation deals with economic and social problems and provides a sound mechanism for the recovery of deposits, it may not be proper for this Court to hold that the State has erred in bringing out the impugned legislation, when there is no effective remedy to cure the mischief under the existing framework of the Statutes. Moreover, aggrieved depositors are multiplied in number and they are reduced penniless because of the fraud played by the financial establishments. Under such circumstances, can't the State bring out an enactment to evolve a foolproof statute for realisation of the dues payable to the depositors in the public interest and to regulate the activities of the financial establishments?

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VIII-B(h). THE IMPUGNED TAMIL NADU ACT AND SECTION 58A OF THE COMPANIES ACT, 1956 WITH REFERENCE TO THE DELHI CLOTH AND GENERAL MILLS CO. LTD. V. UNION OF INDIA CASE

100. The alternative argument advanced on behalf of the petitioners is based on the decision of Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra where the validity of section 58A of the Companies Act, 1956 read with Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975 was upheld.

101. It is contended that if the Tamil Nadu Act is relating to the incorporation of the financial establishments, the same should fall under Entry 43 of the List I which deals with incorporation and therefore, the State legislature has no competency to enact the impugned Act. According to the petitioners, there is already an enactment viz., Companies Act, 1956 which occupies the field.

102.1. Section 58A of the Companies Act, 1956 prescribes the condition under which the deposits may be invited or accepted by the companies either from the public or from the members, and reads as follows:

58A. Deposits not to be invited without issuing an advertisement.-

(1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members.

(2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless-

(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1),

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed [and]

(c) the company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.

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(3)(a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974 in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, shall, unless renewed in accordance with clause (b), be repaid in accordance with the 5[terms and conditions of such deposit.

(b) No deposit referred to in clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is

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such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company.

(c) Where, before the commencement of the Companies (Amendment) Act, 1974, any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934, repayment of such deposit shall be made in full on or before the 1st day of April, 1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction.

(3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1988, shall, unless renewed in accordance with the rules made under sub-section (1), be repaid in accordance with the terms and conditions of such deposit.

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974, in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section,-

(a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of

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the manner of condition prescribed under that sub-section or in contravention of the provisions of sub-section (2), as the case may be,-

(a) the company shall be punishable,-

(i) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted;

(ii) where such contravention relates to the invitation of any deposit, with fine which may extend to [ten lakh rupees] but shall not be less than [fifty thousand rupees];

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(7)(a) Nothing contained in this section shall apply to -

(i) a banking company, or

(ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(b) Except the provisions relating to advertisement contained in clause (b) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(8) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974, grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order:

Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India.

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Provided that the [Tribunal] may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the [Tribunal] may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest,

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direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

(10) Whoever fails to comply with any order made by the [Tribunal], under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees five hundred for every day during which such non-compliance continues.

(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section.

Explanation- For the purposes of this section, "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India."

(emphasis supplied)

102.2. Rule 3(A) of the Companies (Acceptance of Deposits) Rules, 1975 reads as under:

"3-A. Maintenance of liquid assets.—(1) Every company shall before the 30th day of April of each year deposit or invest, as the case may be, a sum which shall not be less than ten per cent of the amount of its deposits maturing during the year ending on the 31st day of March next following, in any one or more of the following methods, namely:

(a) in a current or other deposit account with any scheduled bank, free from charge of lien;

(b) in unencumbered securities of the Central Government or of any State Government;

(c) in unencumbered securities mentioned in clauses (a) to (d) and (ee) of Section 20 of the Indian Trusts Act, 1882 (2 of 1882).

Provided that with relation to the deposits maturing during the year ending on the 31st day of March, 1979, the sum required to be deposited or invested under this sub-rule shall be deposited or invested before the 30th day of September, 1978.

Explanation.—For the purpose of this sub-rule, the securities referred to in clause (b) or clause (c) shall be reckoned at their market value.

(2) The amount deposited or invested, as the case may be, under sub-rule (1), shall not be utilised for any purpose other than for the repayment of deposits maturing during the year referred to in that sub-rule, provided that the amount remaining deposited or invested, as the case

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may be, shall not at any time fall below ten per cent of the amount of deposits maturing until the 31st day of March of that year."

103.1. When a challenge is made as to section 58A of the Companies Act, 1956 as well as Rule 3A of the Companies (Acceptance of Deposits)Rules, 1975 (hereinafter referred to 'Deposits Rules'), the Apex Court in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra held that section 58A of Companies Act, 1956 confers the power on the central Government to prescribe the limits upto which, the manner in which and the conditions subject to which deposits may be invited or accepted by non-banking companies and the same is intended to check the abuse by corporate sector and to protect the depositors, and rejected the contention that the State alone is competent to protect the socially and economically weaker sections of society against exploitation by receiving deposits from them, and ultimately upheld the legislative competency of the Parliament to enact Section 58A of the Companies Act, 1956. It is further held that as the acceptance of deposits is well within the field of legislation under Entries 43 and 44 of the Union List, the same cannot be brought under Entry 30 of List II which deals with money-lending. The Apex Court also held that neither section 58A Companies Act, 1956 nor Rule 3A of the Companies (Acceptance of Deposits) Rules 1975, referred to above, violates Article 14, 19(1)(g) and 21 of the Constitution of India, because Section 58A of the Companies Act, 1956 and Rule 3A of the Companies (Acceptance of Deposits) Rules 1975 are intended to regulate the acceptance of the deposits from the public and also to provide liquid finance to the company to enable it to meet its obligation on maturity of deposits. It is further held that the amount deposited to meet the obligation under Rule 3A means and remains the property of the company and therefore company neither deprived of the property, nor the same is confiscated; and the same is intended to meet the immediate need of the depositors for repayment of deposits on maturity. The Apex Court thus held that section 58A and Rule 3A are regulatory measures and it may not be within the domain of the Court to test the wisdom and efficacy of the legislature and therefore, disagreed with the contention of the petitioners that the State alone can enact a law to protect the socially and economically weaker sections of the society. Then why the impugned enactment?

103.2. The straight answer to the question is that none of the petitioners is a company registered under the Companies Act, 1956 and hence the provisions of the Companies Act, 1956 are not applicable. On the other hand, the impugned legislation is enacted in the public interest to regulate the activities of financial establishments which falls under Entry 1 and 32 of the State List.

103.3. It is true when a challenge is made to Section 58A of the Companies Act and Rule 3(A) of the Companies (Acceptance of Deposits) Rules in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra, the Apex Court held that the power to regulate the acceptance of the deposits by the Companies is well within the field of legislation of the Union of India. But, under Entry 32, the State is also competent to make appropriate laws

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incorporating and regulating the corporations other than those specified in List I and to make necessary laws for the unincorporated trading, which we propose to deal in detail latter.

VIII-B(i). THE IMPUGNED TAMIL NADU ACT WITH REFERENCE TO THE CRIMINAL LAW AMENDMENT ORDINANCE, 1944 AS MADE APPLICABLE BY THE CRIMINAL LAW (TAMIL NADU AMENDMENT) ACT, 1997

104.1. We also reject the contention that the subject matter of impugned enactment is already occupied by Criminal Law Amendment Ordinance, 1944, the provisions of which are made applicable to the State of Tamil Nadu by the Criminal Law (Tamil Nadu Amendment) Act, 1997, which came into force on 12.8.1997.

104.2. The Criminal Law Amendment Ordinance is intended to prevent the disposal or concealment of money or other property procured by means of certain offences punishable under the Indian Penal Code, which are scheduled thereunder.

104.3. Section 3(1) of the Ordinance enables the State Government or the Central Government, as the case may be, to make an application to attach the money or other property of any person, to the District Judge, within whose jurisdiction such person commits any of the scheduled offences, if there are reasons to believe that such money or other property is procured by means of any of the scheduled offences or if such money or other property cannot, for any reason, be attached, to attach other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property. The provisions of Code of Civil Procedure shall apply for execution of such order of attachment as per Section 3(2). Section 3(3) contemplates that the application should contain the grounds of reasons to believe for invoking Section 3(1) and also other details relating to money, property and value of the same, the interest and title of such person, etc.

104.4. Section 4(1) empowers the District Judge to pass an appropriate order of ad interim attachment, as stated therein; Section 4(2) provides a post decision opportunity to such person before making the ad interim order of attachment absolute; and Sections 4(3) and 4(4) provide similar post decisional opportunity not only to persons interested in the property but also to any other person who is not served with notice of the order of ad interim attachment.

104.5. Section 5 of the Ordinance empowers the District Judge to investigate into the objections and to pass an order either making the ad interim order of attachment absolute, or varying it by releasing a portion of the property from attachment or withdrawing the order of ad interim attachment as provided thereunder. Section 6 provides for attachment of properties of mala fide transferees. As per Section 7 the provisions relating to Code of Civil

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Procedure are applicable for executing the order of attachment. Section 8 provides for security in lieu of attachment. Section 9 enables the District Judge to pass an order just and reasonable for maintenance of the family of the person interested in the property and also to safeguard his business. As per Section 10, such attachment shall be in force for one year and shall be renewable thereafter at the option of the respective applicant who applied for attachment. Section 11 provides an appeal to the High Court. Sections 12 and 13 provide for the evaluation and disposal of the property subject to the termination of the criminal proceedings of the scheduled offences, either to release the attachment if the person is acquitted or to forfeit the property in case of conviction. If the property is forfeited, after deducting the cost of attachment, the money or the property shall be distributed in proportion towards the loss sustained by the Government or local authorities.

104.6. The scheduled offences are as under:

1.***
2. An offence punishable under Section 406 or section 408 or 409 of Indian Penal Code, where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a State Government or a department of any such Government or a local authority or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in Section 617 of the Companies Act, 1956 or a society aided by such corporation, authority, body or Government company or a person acting on behalf of any such Government or department or authority or corporation or body or Government company or society.
3. An offence punishable under Section 411 or section 414 of the Indian Penal Code, where the stolen property in respect of which the offence is committed is property such as is described in the preceding item and in respect of which an offence punishable under Section 406 or section 408 or section 409 of the said Code has been committed.
4. An offence punishable under Section 417 or section 420 of the Indian Penal Code, where the person deceived is His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a State Government or a department of any such Government or a local authority or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 or a society aided by such corporation, authority, body or Government company or a person acting on behalf of any any such Government or department or authority or corporation or body or Government company or society.
4A. An offence punishable under the Prevention of

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Corruption Act, 1988.

5. Any conspiracy to commit or any attempt to commit or any abetmet or any of the offences specified in items 2, 3, 4 and 4-A.

104.7. While making the Criminal Law Amendment Ordinance, 1944 applicable to Tamil Nadu by the Criminal Law (Tamil Nadu Amendment) Act, 1997, by virtue of Section 2(1) and 2(2), the wordings beginning with "where the property" and ending with "department or authority" in item 2 and beginning with the words "Where the person" and ending with "department or authority" in Item 4 were omitted. As a result, the money or other properties procured by means of the offences scheduled thereunder, irrespective of the Governments transactions, are all brought under the purview of the Ordinance. However, there is no corresponding amendment to Section 13(6) of the Criminal Law Amendment Ordinance, 1944 in the Criminal Law (Tamil Nadu Amendment) Act, 1997 and consequently, the provision made under Section 13(6) of the Criminal Law Amendment Ordinance, 1944 for distribution of the money or other property attached in proportion towards the loss sustained by the Government of local bodies is not applicable to the agony of the depositors.

104.8. In order to invoke the provisions of the Criminal Law Amendment Ordinance, 1944, as a condition precedent to attract the scheduled offences, there should be mens rea as well as reasons to believe that the money or other property sought to be attached are procured by means of such scheduled offences; otherwise the provisions of the Criminal Law Amendment Ordinance, 1944 are not attracted and in any event, the attachment under the Ordinance is subject to the result of the criminal proceedings, for which the mens rea is the basic criteria. In a criminal case, in order to prove the guilt of the accused and to meet the ends of justice, the Rule of Mens rea has to be established beyond all reasonable doubts, but all is not so in a case of an economic offence. The classical view that "no mens rea, no crime" has long ago been eroded especially regarding economic crimes, vide R.S.Joshi v. Ajit Mills, AIR 1977 SC 2279. Therefore, in economic offences, the notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be preceded by mens rea must be rejected.

104.9. In a developing country with the mass of people illiterate and below poverty line, the State should be armed with powers to secure social and economic justice. While exercising such power for enacting appropriate legislation , it is a common knowledge that a rule of strict liability or absolute liability should be imposed without insisting mens rea to deal with such socio-economic crimes.

104.10. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national

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interest, [vide State of Gujarat v. Mohanlal Jitamalji Porwal, (1987) 2 SCC 364]. The community acting through the State is also entitled to justice. The community or the State is not a persona non grata whose cause may be treated with disdain. Economic offenders who ruin the economy of the State are therefore to be brought to book unsparingly.

104.11. To attract the statutory offence declared under Section 5 of the Tamil Nadu Act, a well organized and white collared economic crime, there is no need to establish mens rea, as it is sufficient to apply the rule of strict liability to misfeasance or nonfeasance committed by the financial establishments, which are dealt with latter, and this makes all the difference between the two enactments.

104.12. We are therefore satisfied that even though the provisions of the Criminal Law Amendment Ordinance, 1944 as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997 provide the power and procedure, whether or not any Court has taken cognizance of the scheduled offences, for attachment of the money or other property that is procured by means of the scheduled offences, and such power and procedure prescribed is akin to that of the impugned Tamil Nadu Act, the subject matter of the impugned enactment is not occupied by the Criminal Law Amendment Ordinance, 1944 for two vital reasons, viz., (i) such attachment under the Criminal Law Amendment Ordinance, 1944 is subject to the result in the criminal prosecution for the scheduled offences; and (ii) for want of provision for realisation and equitable distribution of the dues of the victimized depositors.

104.13. For all these reasons, the provisions of the Criminal Law Amendment Ordinance as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997 is not in any way helpful to the depositors. On the other hand, the offence declared statutorily under Section 5 of the impugned Tamil Nadu Act is unique, well-organised and white-collared in nature, which shatters the economy and ruins the social status of the middle, lower middle and poor class of community, and therefore, such an offence does not come under the scheduled offences governed under the Criminal Law Amendment Ordinance, 1944 as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997.

105. The Government, having apprehended that the long wait for justice by the cheated depositors of non-banking financial establishments, whether incorporated or unincorporated would turn out to be much ado, as money power and loop holes in the existing legal system are being used for the own benefit of the financial establishments, who have taken crores of rupees that belong to lakhs of people promising higher rate of interest, thought it fit to bring out an appropriate legislation to curb the activities of such financial establishments, finding solution to the tragedy of these depositors not only by attaching the properties of the financial establishments and the properties of mala fide transferees, but also realising the sale proceeds and distributing the same equitably among the depositors and thus, the subject matter of the impugned Act is not in any way comparable with the Criminal Law Amendment Ordinance, 1944, as made applicable to the State of Tamil Nadu by the Criminal

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Law (Tamil Nadu Amendment) Act, 1997. In any event, there cannot be any bar for the State legislature to enact a special legislation, viz. the impugned Tamil Nadu Act, which not only deals with the penal offence of the defaulters, but also provides for recovery machinery, akin to that of Civil Code.

VIII-B(j). THE IMPUGNED TAMIL NADU ACT AND THE RELEVANT ENTRIES, VIZ., 1, 7 AND 8 IN LIST III OF VII SCHEDULE TO THE CONSTITUTION OF INDIA

106. The alternative argument advanced by the learned Advocate General is that the State has the legislative competency under Entries 1, 7 and 8 of the Concurrent List of the VII Schedule to the Constitution of India, viz., criminal law, contracts or actionable wrongs respectively. According to him, the field of legislation qua the impugned enactment can be traceable either under criminal law, contracts or actionable wrongs. Entry 1 of the Concurrent list deals with criminal law, including all matters included in the Indian Penal Code, but excluding offences against laws with respect to any of the matters specified in Lists I and II. Entry 7 deals with contracts and Entry 8 deals with actionable wrongs.

107.1. Even though the acceptance of deposits is regulated under Section 58A of the Companies Act, 1956, in the instant case, the omission and commission of the financial establishments attracts the doctrine of misfeasance, viz., doing in a wrongful manner that which the law authorizes or requires a public officer to do.

107.2. Similarly, even though Section 45S of the Reserve Bank of India Act, 1934 prohibits the acceptance of the public deposits by the financial establishments, the omission and commission of the financial establishments attracts the doctrine of non-feasance, viz., non performance of some act which a person is obligated or has responsibility to perform. In either case, the financial establishments are chargeable for their commission and omission under Section 5 of the Tamil Nadu Act.

108. Section 3 provides for passing ad interim orders of attachment of the properties of the financial establishments and the persons mentioned therein to safeguard the interest of the depositors. Section 5 has been inserted in the impugned Act to punish with imprisonment the financial establishments and the persons responsible for the management of the affairs of the financial establishments who have committed default in the payment of deposit or failed to render service for which the deposit has been made. So also, Section 8 provides for the attachment of properties of mala fide transferees. Therefore the field of legislation of the impugned Act is traceable to Entry-1 of the Concurrent List.

109. The impugned Tamil Nadu Act would also fall under Entry 7 of the Concurrent List considering the submission made by the learned Advocate General that most of the financial establishments are having the practice of using pronotes in their transactions, which fact is not denied by the petitioners. Further, the Act impugned cannot be said in pith and substance to be one against banking regulation, but it deals with special species of

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contracts with sinister features, wherein the innocent depositors were wooed with higher rate of interest and ultimately cheated. As can be seen from the provisions of the Tamil Nadu Act referred to earlier, the Tamil Nadu Act is not intended to regulate the transactions between the depositors and deposit mobilisers and borrowers, but it is only intended to recover the amounts due to the depositors, as agreed to between the parties and in case of default, to enforce the terms of contract between the parties and to recover such amounts, in addition to other machineries available under the law. The impugned Tamil Nadu Act is therefore referable to Entry 7 of the Concurrent List.

110. As already observed, the Tamil Nadu Act is intended to provide relief to the middle, lower middle and poor people who form part of the socio-economic weaker sections of the society, by means of attachment of properties of the financial establishments or other persons mentioned in section 3 of the Act as well as attachment of properties of mala fide transferees and hence, the legislation is also traceable to Entry-8 of the Concurrent List.

111. Next, we proceed to examine the specific plea of the State Government that the impugned enactment is traceable to Entries 1 and 32 of the List II of VII Schedule of the Constitution of India.

VIII-B(k) THE IMPUGNED TAMIL NADU ACT AND ENTRY 32 OF LIST II WITH REFERENCE TO THE POWER TO REGULATE

112. Of course, it was also contended that the impugned subject matter cannot be considered under Entry 32 of List II, but, we are unable to appreciate the same as the State intended to regulate the activities of the financial establishments inasmuch as the business of the petitioners/financial establishments is nothing but a trade in finance. The Apex Court in K.Ramanathan v. State of Tamil Nadu, 1985 (2) SCC 116, held that

> " The power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would, therefore, appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the Legislature seeks to remedy."

Therefore, the impugned subject matter is traceable to Entry 32 of List II.

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113. The regulatory powers conferred under Entry 32 of List II invoked by the State in enacting the impugned Act is with a view to avoid fraud on the depositors either by denying or delaying their dues on maturity and such power cannot be complained of as violative of Article 19(1)(g) of the Constitution of India vide. Shriram Chits and Investment (P) Ltd v. Union of India, 1993 Supp (4) SCC 226.

114. The word "trading" used in "unincorporated trading" in Entry 32 of List II, would mean only the systematic business of lending as understood in the commercial world and in ordinary meaning. Moreover, trade cannot be confined to the movement of the goods but may also extend to transactions linked with merchandise or the flow of goods or the promotion of buying and selling or advances, borrowings, discounting bills and mercantile documents, banking and other forms of supply of funds. Therefore, the business undertaken by the financial establishments herein, accepting the deposits on a promise of wooing to pay a higher rate of interest, and then circulate the money to third parties for higher rate of interest, and thereafter, deceit the depositors, in our considered opinion, be brought under the meaning of "unincorporated trading" found in entry 32 of List II.

115.1. When a general evil is sought to be suppressed some martyrs may have to suffer, for the legislature cannot easily make meticulous exceptions and it has to proceed on broad categorizations and not singular individualization, vide. Srinivasa Enterprises v. Union of India, (1980) 4 SCC 507.

115.2. Quoting again from Srinivasa Enterprises v. Union of India, [(1980) 4 SCC 507, at page 516], 'judicial validation of a social legislation only keeps the path clear for enforcement. Spraying legislative socio-moral pesticides cannot serve any purpose unless the target area is relentlessly hit.'

115.3. We have already considered the gruesome background of economic inequities, which necessitated the State Government to bring out the impugned enactment. There was an urgent need for the impugned legislation to find a remedy for the evil caused by the financial establishments exploiting their anxiety for getting higher rate of interest. Therefore, the State Government is right in enacting the impugned Act to curb the gambling in the finance trade.

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115.4. The danger of allowing the deposits to be accepted without regulation is more acute and urgent. Not to permit a play in the joints would be to totally make it ineffective in meeting the challenge of the social evil. In the ultimate analysis, the mechanics of any economic legislation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class, the processual basis of price fixation has to be accepted, and one such course alone is permissible, vide Prag Ice and Oil Mills v. Union of India, AIR 1978 SC 1296.

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115.5. The provisions meant to check the evil must be viewed through socially constructive, not legally captious, microscope to discover glaring unconstitutional infirmity, and that when laws affecting large chunks of the community are enacted, stray misfortunes are inevitable and that social legislation, without tears, affecting vested rights is virtually impossible, vide B.Banerjee v. Smt.Anita Pan, AIR 1975 SC 1146.

115.6. It is also well settled that private rights must yield to the public need and that any form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt, vide Leo Nebbia v. People of the State of New York [1934] 78 Law Ed 940.

115.7. The problems of the Government is one of practical in nature. Therefore, the State has rightly stepped in by way of this legislation to protect the great number of depositors under due process of law demonstratively as the power of the State to enact appropriate law of regulation for such practical problems has got wide connotation, and we do not find any irrelevancy in the choice made by the State Government in bringing out the impugned Act by taking recourse under Entries 1 and 32 in the List II of the Constitution of India in this matter.

116.1. In the instant case, the efforts taken by the State by enacting the impugned Act seeks to plug the loopholes in the existing socio economic scenario as the prevailing legal system is not able to cure the mischief. There is not even a semblance of conflict, what to talk of direct conflict, between the impugned State Act and the Central Acts, viz., Section 45S and 58B (5A) of Reserve Bank of India Act, 1934 or Section 58A of the Companies Act, 1956, as the case may be, to bring about the situation where one cannot be obeyed without disobeying the others. Both the Acts can operate simultaneously as they do not occupy the same field. As the enactments operate in two different fields without encroaching upon each others field, there is no repugnancy. That apart, the Court is required to look at the substance by taking into account the entire enactment as a whole and the main objects and the scope and effect of the provisions and incidental and superficial encroachments are to be disregarded. The doctrine of occupied field applies only when there is clash between the Union and the State List within an area coming within the competence of both and if the impugned legislation substantially falls within the power expressly conferred upon the legislature which enacted the law any incidental encroachment in the field assigned to the other legislature is to be ignored [vide: J.Ameergani, W/o.Jaheer Hussain v. State & another (2005-2-L.W.(Crl.) 606)].

116.2. In any event, assuming the impugned Tamil Nadu Act incidentally trenches upon the field of legislation of the Central Acts, referred to above, the attack on the ground of occupied field, much less repugnancy, got cured by the assent of the President to the impugned Act.

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117. Even though the acceptance of the deposit would fall within the meaning of Banking as the same is akin to banking in essence and therefore, may also fall within the field of legislation under Entry 45 (banking) of List I in view of the decision in Kanta Mehta v. Union of India, referred supra, we are satisfied that it is enacted, in pith and substance, under Entry 1 or 32 of List II of VII Schedule to the Constitution of India. Because, it may not be proper for this Court to go into the societal realities, and socio-economic disparities, which are in their entirety left for the consideration of the legislature while enacting the impugned Act in the public interest and to regulate the business of the financial establishments. Otherwise, when the financial establishments fold up their tents or become sick and windup, the depositors will have to stand in the queue as unsecured creditors with no umbrella of protection.

VIII-B(l). THE IMPUGNED TAMIL NADU ACT AND THE CONCEPT OF PUBLIC ORDER AND ENTRY 1 OF LIST II WITH REFERENCE TO THE POWER TO MAINTAIN PUBLIC ORDER

118. Lastly, we propose to deal with the "public interest" sought to be safeguarded under the impugned enactment, which has a direct bearing on the concept of "public order".

119. The Full Bench of the Bombay High Court in Vijay C.Puljal v. State of Maharashtra, referred supra, has rejected the contention that the legislative field for the Maharashtra Act is traceable to Entry 1 of State List-II, viz., Public order. While so, it is held that while enacting laws on public order a numerous problems of law enforcement and maintenance of public order have their genesis. It is further observed that the field of legislation of public order must address to the public order and therefore, in the guise of legislating on "public order", the State had entered into the substantive area which was reserved for parliament in Union List. It is also observed that law on public order must truly and essentially address itself to the preservation and maintenance of public order.

120. In our considered opinion, on the question, whether the impugned enactment can be sustained under Entry 1, viz. Public Order, it should be remembered that public order is an expression of wide connotation intended to take care of the public safety for the members of the political society. Therefore, the public order need not in every case be traced either to the security of the State or to the law and order.

121. Public Order has a comprehensive meaning so as to include public safety in its relation to the maintenance of the public order and the maintenance of the public order involves consideration of the public safety. The Public order, public safety, public tranquility and the public interest are all overlapping terms with each other. The expression public order therefore requires the very wide connotation. The public order is the basic need in any organised society. It implies orderly state of society and community in which

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citizens can peacefully pursue their normal activities of life. Therefore, it may not be proper to read the public order only with reference to insurrection, riot, turbulence or the crimes of violence. Hence, the public order in Entry 1 of List II, must be interpreted to include the public safety in its relation to the maintenance of the public order.

122. All and every breach of tranquility, whether in social or economic sphere of life of citizens, would involve breach of public order and therefore, the field of the legislation of the State Government to enact appropriate legislation in the matter affecting economic and social disorders which ultimately shake the public order, unless and otherwise it is traceable to the security of the State, the use of any Naval, Military and Air Force or any other armed force of the Union of India, cannot be curtailed by the Court on the ground of legislative competency.

123. While the law and order forms the largest concentric circle and the next represents the public order, the smallest represents the security of the State. Therefore, every infraction of law must necessarily affect the public order. But, an Act affecting the law and order may not necessarily affect the public order. Likewise, an Act which may affect the public order need not necessarily affect the security of the State. Therefore, the true test is not the kind of disorder but the potentiality of the Act in question. One Act may affect only individuals, while the other though of a similar kind may have such an impact that it would disturb the even tempo of the life of the community [vide Arun Gosh v. State of West Bengal ((1970) 1 SCC 98].

124. But, this does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act for instance affecting the public order may have an impact that it would affect both public order and the security of the State. In such a case the power can be exercised on both grounds viz. disturbance of the public order and danger to the security of the State [Vide Kishori Mohan Bera v. State of West Bengal, (1972) 3 SCC 845, Nathulal Govindji Jhagada v. State of Gujarat, (1981) 22 Guj LR 503]. Therefore, the public order postulates a synonymous with public safety and public interest. Hence, the problem of the depositors is the problem of the public and it cannot be decided numerically.

125. A serious contention was raised to the effect that public order is one as stated in the statement of objects and reasons in Act 14 of 1982 and therefore, public order is totally a different concept; that there should be actual physical force to danger to life and property or there should be threat to life and property; and that since the framers of Constitution originally included preventive detention, but the same was subsequently taken away and in that context, public order should be looked into. But, we are unable to appreciate such contention, because the Apex Court in State of U.P. v. Sanjai Pratap Gupta,(2004) 8 SCC 591, following its earlier decision in Arun Gosh v. State of West Bengal, referred supra, held that Public order, law and order and the security of the State fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the

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smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.

126. It can, therefore, be concluded that the Tamil Nadu Act is traceable to Entry 1 of the State List. For this view support can also be had from the decision of the Apex Court in Romesh Thappar v. State of Madras, AIR 1950 SC 124, wherein it is held as under:

> "Public safety ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context. In the classification of offences in the Indian Penal Code, for instance, Chapter XIV enumerates the offences affecting the public health, safety, convenience, decency, and morals and it includes rash driving or riding on a public way (Section 279) and rash navigation of a vessel (Section 280), among others, as offences against public safety, while Chapter VI lists waging war against the Queen (Section 121), sedition (Section 124-A) etc. as offences against the State, because they are calculated to undermine or affect the security of the State, and Chapter VIII defines offences against the public tranquillity which include unlawful assembly (Section 141) rioting (Section 146), promoting enmity between classes (Section 153-A), affray (Section 159) etc. Although in the context of a statute relating to law and order securing public safety may not include the securing of public health, it may well mean securing the public against rash driving on a public way and the like, and not necessarily the security of the State. It was said that an enactment which provided for drastic remedies like preventive detention and ban on newspapers must be taken to relate to matters affecting the security of the State rather than trivial offences like rash driving, or an affray. But whatever ends the impugned Act may have been intended to sub-serve, and whatever aims its framers may have had in view, its application and scope cannot, in the absence of limiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State. Nor is there any guarantee that those authorised to exercise the powers under the Act will in using them discriminate between those who act prejudicially to the security of the State and those who do not."
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> (emphasis supplied)

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127. The malady of the thousands and thousands of depositors ramped into a public disorder on account of the resentment caused by the financial establishments, who had accepted the deposits on the promise to repay the same with fabulous, but commercially not viable, rate of interest, however could not keep up the promise. The fraudulent default of the petitioners forms a unique class of organised and white-collared crime.

128. A systematic conspiracy was attempted by these financial establishments, which not only committed fraud on the depositors, but also siphoned of or diversified the funds of the depositors mala fide. The circumstances and the economic and societal realities under which the impugned enactment was legislated have to be taken into consideration to decide whether the legislative field of the State Government is traceable to "public order". The Court must necessarily keep in view the mischief which the legislature seeks to remedy. As per the statistics as on November, 2006 placed before us, 19 Lakhs of depositors were longing for realisation of their dues. The following details furnished in the Counter affidavit filed by the Secretary to Government, Home Department, may give a clear picture:

(i)	Total No. of cases reported	1194
(ii)	Total No. of depositors preferred complaints with Police (According to the Investors Federation, total depositors cheated above 19 Lakhs)	10,43,006
(iii)	Amount involved in Police complaints	1925.48 Crores
(iv)	Amount refunded	762.53 Crores
(v)	Amount yet to be refunded	1162.95 Crores
(vi)	Value of properties identified	877.87 Crores
(vii)	No. of persons benefited	
(viii)	Cases registered under TNPID Act	521
(ix)	Non-TNPID (Schedule Offences)	673
(a)	Senior Citizens above 80 years	About 6 Lakhs
(b)	Senior Citizens (between 60 and 80 years)	10 Lakhs
(c)	Widow	About 40,000
(d)	Handicapped	About 2,000
(e)	Driven out by wards	About 5,000
(f)	Expired	About 8,000
(g)	Below poverty line	About 7 Lakhs
(h)	Pensioners	About 3 Lakhs

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129. If that be so, under the facts and circumstances and the societal realities for enacting the impugned Act, which is intended to safeguard the social and economic interest of the innocent depositors, won't the grievance of the depositors which rippled violently unset the public order in the society creating a social and economic disorder? Answering affirmatively, we do find force in the submissions made on behalf of the State Government that the legislative competency of the State is traceable to Entry 1 of List II which deals with "public order" apart from Entry 32 which regulates the activities of

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the financial establishments, to monitor them to rescue the depositors.

130. Piercing the veil of legalese, the core question is the degree of social control imposed by the State and resisted at every turn by the financial establishments. In pith and substance, we are also satisfied that the impugned Act is meant for public safety and public interest and to regulate the unincorporated trading and finance. This leads to the next question whether public order includes public interest and public safety.

131. The sad situation of the depositors is that the high priority promise of independence laws directed to agrarian reforms rolled out from State legislatures in quick succession. Urban elite found it disadvantageous to invest their savings in agricultural land. It is said that Rent Restriction Acts were a disincentive for investment in urban house property. Gold Control measures dried up gold as a venue of investment of savings. Bank interests were discouraging. Social security in old age being niggardly or non-existent, there was fascinating attraction for deposits in non-banking companies.

132. On the other hand, the attempt of the financiers exploiting the anguish of the depositors, is nothing but a notorious abuse of the innocent desire of the depositors for higher rate of interest for the small savings that they invested, for which they have been given a small passbook as a token of their acknowledgment, which they consider as a passport for their children higher education in some cases, or wedding of daughters in some other, and as a policy medical insurance in the case of most of the aged retired depositors, but in reality, in all cases, an unsecured promise executed on a waste paper. The senior citizens above 80 years, senior citizens between 60 and 80 years, widows, handicapped, driven out by wards, retired Government servants and pensioners, living below the poverty line, and similarly placed persons constitute the community of depositors. If their grievance is not taken as public interest, or public safety, the words, 'public safety' and 'public interest' would be only dead letters. Is it not the duty of the State to curb such mismanagement and malpractice indulged by the financial establishments adopting unscrupulous attempt?

133. Obviously there is a social anguish to curb exploitation of the depositors by these financial establishments, to prevent and protect the precarious loss of the depositors and to recover the same as much as possible. The unsecured depositors themselves cannot, without the aid of the State, find a solution for their grief, by taking a recourse under the legal proceedings ordinarily available to them, but for the impugned enactment. Otherwise, it would only render them to abandon their sugar coated promises and make recourse to conventional legal proceedings, incurring expenses for court fee, advocate fee, apart from the inconvenience involved therein, meeting all technical objections, giving way for docket explosive litigations, without tasting the fruits of the same.

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134. Is it possible for those depositors who lost everything in the hands of the financial establishments on the tempting and robing in schemes, to fight against these financial establishments on their legs, without any aid of the State? No. In our considered opinion, the State, has rightly come with an enactment to wipe away the tears of the innocent depositors and to protect their interest and also to attach the property immediately and to take effective steps to recover the amounts diverted and to return as much as possible to the persons who lost their savings, of course providing adequate machinery and guidelines for the same, by protecting the innocent depositors and also genuine third parties, whose properties are also attached.

135. The State being the custodian of the welfare of the subjects cannot be a silent spectator without finding a solution for this gruesome plague. The State therefore had to awake and protect the vulnerable sector from the evil hands of the financiers, who have no social responsibility, but with a lustful desire of easy money making promising attractive returns for the poor investors. The noxious net cast by the financial establishments was large and the State was rightly moved to stop this menace. Many a little makes a mickle, and those small sums collected from a substantial number of subscribers accumulated into huge resources for the financiers, who ultimately diverted their collections and converted the deposited amounts as assets in the names of third parties, and finally one day attempted to close the financial establishments, disappointing the innocent depositors. The grim picture of the entire episode enacted by financiers is nothing but to gamble upon the appetite of the innocent depositors for higher rate of interest and to steal out the entire sterilized savings of the innocent depositors diplomatically under the banner of white collar financial establishments, out of their appetite for higher rate of interest and finally to siphon of them in entirety. In the name of attractive rate of interest, the financiers adopted unique, modus operandi mesmerizing the depositors to deposit their hard earned money under different schemes, which are nothing but have an anti-social impact on the community at large. Then, is it not the responsibility of the welfare State, who have owed to establish/maintain socio-economic justice in the society?

136. If no law could be made to curb such activities of the financial establishments effectively and to realise the dues payable to the depositors, an anomalous situation would have been created, viz., these financial establishments would continue their business and divert the funds clandestinely by mala fide transferring and would siphon of the funds of the depositors, and finally would be prepared to face the penal action under section 45S or 58B(5A) of the Reserve Bank of India Act, 1934, as the case may be, taking advantage of the loopholes in committing such white collar offences. But, the depositors would be left in lurch, with no remedy. To permit such anomalous situation, in our opinion, would be contrary to the public interest. Therefore, the element of public order comes into play sustaining the impugned legislation under Entry 1 of the List II of VII Schedule.

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137. It is settled law that the Courts are concerned only with the constitutionality, but not with the wisdom of the legislature or lack of the same which are essentially for the legislature to determine. The judicial deference to legislature in the instances of economic regulation is a well established principle borne out of the acceptance of reality and courts, lacking the capacity to inform themselves fully, about the peculiarities of a particular local situation, should hesitate to dub the legislative classification as irrational, because legislative judgment may respond closely to local needs and courts' familiarity to those needs may be limited, vide State of Gujarat v. Shri Ambica Mills Ltd., AIR 1974 SC 1300.

138. Statutes made for the public good ought to be liberally construed and in doing so, another principle should not be lost sight, namely, safety of the people is the supreme law. Salus Populi est suprema lex (safety of the people is the supreme). The Constitution is the documentation of founding faiths of the nation and the fundamental direction for the fulfillment. Therefore, it is not possible to deduce a limitation from something supposed to be inherent in the constitution itself. The spirit of Constitution therefore cannot prevail as against its letter. [vide: A.K.Gopalan v. State of Madras, AIR 1950 SC 27]. The legislative competence should be tested by the spirit of the enactment which vivifies but not by mere letter. The Courts are not at liberty to declare an act void based on elusive and unsafe guide.

139. The State, invoking the field of legislation under Public Order, Entry 1, List II, as a parent of the country, applying the doctrine of parens patriae, is obligated to shoulder with the responsibilities in exercise of its sovereign power and to discharge its duties to protect the public interest.

140. Our constitution makes it imperative to secure for the State to secure to all its citizens the rights guaranteed by the Constitution. Where the citizens are not in a position to assert and secure their rights, the State must come into picture and to protect and fight for the right of the citizens. Otherwise, the rights conferred on the citizen and the duty on the State would remain as dead letters. It is a protective measure to which the social welfare state is committed. It is therefore necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge their obligation to protect the victims. While the State invoked the doctrine of parens patriae, it may not be proper for this Court to stand on the cobweb of technicalities, without properly appreciating the scope and object of the impugned Act; nor to put a spoke in the wheel which would be detrimental to the public at large. The doctrine of parens patriae may not be a rule in strict sense but it is an evolution. Therefore, the power of the State in bringing the legislation applying the doctrine of parens patriae has to be given a broader appreciation than narrow interpretation without measuring the legislative will by the contour of legislative competency [vide: Charan Lal Sahu v. Union of India (1990) 1 SCC 613] .

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141. We are therefore obliged to uphold the emancipation of the sovereignty of the State to enact the impugned law as the State realised its responsibility to protect the victims, to provide remedy to the victims and to find a solution to the disastrous conditions of the victims who were economically ruined by the financial establishments. Hence, we have no hesitation to hold that the legislature is perfectly justified in coming out with the impugned Act so that the tragedy of the victims who have been exploited by the white collared, organised crime of the financial establishments and the persons managing their affairs can be remedied regulating the activities of the financial establishments and to safeguard the public interest and thereby to maintain the "public order".

142. In the instant case, the noxious net caused by the financial establishments was large and the State moved to stop this menace. Small sums collected from the subscribers accumulated into huge resource like many a little makes a mickle, and then these financial establishments disappear and evade payments, after siphoning of the amounts collected or diverting them by mala fide transfers. As referred to above, about 19 lakhs of people reported to be suffering by this menace in the State of Tamil Nadu.

143. Reserve Bank of India being a body corporate, constituted under the Reserve Bank of India Act, 1934 can only transact its business which is authorised by the Act to transact. Under the existing provisions of either Reserve Bank of India Act, 1934 or Companies Act, 1956, there is no provision to deal with the financial establishments, particularly for the recovery of amounts due to the depositors, viz., to attach, sell, realise and distribute equitably.

144. In the impugned enactment, the Government has rightly provided special machinery and judicious mechanism to attach the properties of the financial establishments or the persons mentioned under Section 3 of the Act as well as that of the mala fide transferees and to bring them for sale and thereafter to distribute the sale proceeds equitably among the depositors, of course, in compliance of the principles of natural justice, as discussed above in detail, while considering the issue (i).

145. Therefore, the State Government rightly in order to protect the interest of the public and to regulate the activities of the financial establishments, enacted the impugned Act to meet the urgent need. The State Government has, thus, rightly, in order to plug certain loopholes in the existing system and in the public interest, tracing the field of legislation under Entries 1 and 32 of the State List, enacted the impugned Act.

146. What form a regulatory measure must take, is, for the legislature to decide. The court would not examine its wisdom or efficacy except to the extent that Article 13 of the Constitution is attracted. The State thus keeping a close watch over the situation, has taken steps to eradicate the abuses of the economic power by these financial establishments by enacting the impugned

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Act. By the impugned legislation the society at large is sought to be protected from the ever haunting spectre of the financial establishments. In pith and substance, we are satisfied that it is coming under Entries 1 and 32 of the State List. In that view of the matter, we need not go into the question whether the impugned legislation is traceable to Entry 30 of the State List (List-II), viz., Money-lending.

147. The Country is undergoing major socio-economic changes to meet the needs of the public. Not only the Legislature and the Executive, but also the Judiciary should shoulder the responsibility for the sake of such central and vital socio-economic developments. The Judiciary cannot disown its obligation towards such societal realities, economic disorders and socio-economic disasters. Its contribution should be in appreciation of the goals undertaken by the Legislature and the Executive to meet the socio-economic challenges articulated by appropriate enactments, which are presumed to be constitutionally valid, but not otherwise.

148. No doubt, the legislation we uphold is an added responsibility on the State. We hope the State shall vigorously enforce the Act with sympathy for the victim classes and show progressive measure in action. The authorities conferred with powers will enforce the law with right orientation, correct grasp and socio-economic activism. The spirit that exhibited on behalf of the State should be shown in the field of enforcement and yield the fruits to the longing depositors. Because many a welfare legislation reportedly remains cloistered virtues slumberous in effect. The finest hour of the rule of law is when the law disciplines life and matches promise in performance.

149.1. To sum up,

a. the field of legislation, viz., Tamil Nadu Act, is traceable to Entries 1 and 32 of List II, besides falling under Entries 1, 7 and 8 in the Concurrent List, which as already observed needs no deliberation;

b. the impugned Tamil Nadu Act does not fall within the legislative field of the Union List (List-I); and

c. though there is trenching, the same is only incidental, which is permissible in law.

149.2. Issue (ii) is answered in the affirmative.

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IX. CHALLENGE AGAINST THE CONSEQUENTIAL PROCEEDINGS UNDER THE TAMIL NADU ACT

150. When the competent authority initiated action under Sections 3, 4, 5, 6, 7, 8, 9 or 10 of the Act against the financial establishments or any other person to achieve the awesome objects of the Tamil Nadu Act, the same were challenged either by way of Writ Petitions, Civil Miscellaneous Appeals,

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Crl.O.Ps., Crl.R.C., on the ground that the impugned Tamil Nadu Act is unconstitutional, and some of the cases are included in the batch and some of them are still pending before this Court. Since we have declared that the Tamil Nadu Act does not suffer any legislative competency; nor its provisions are arbitrary and unreasonable, violative of principles of natural justice; nor offends Articles 14, 19(1)(g) and 21 of the Constitution of India, all these Writ Petitions and Civil Miscellaneous Appeals stand dismissed and consequently, the Special Court or the Competent Authority, as the case may be, shall proceed to enforce the law with right orientation, correct grasp and socio-economic activism, as indicated above.

X. THE RESULT

In fine,

(i) we hold that the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 does not suffer any legislative competency; nor its provisions are arbitrary and unreasonable, violative of principles of natural justice; nor offends Articles 14, 19(1)(g) and 21 of the Constitution of India;

(ii) the writ petitions as well as the writ appeal questioning the constitutional validity of the Tamil Nadu Act are dismissed;

(iii) in so far as the writ petitions challenging the consequential attachment proceedings taken and the criminal action initiated as well as the civil miscellaneous appeals that arise out of the order of Special Court are concerned, as the provisions of the Tamil Nadu Act are held valid, we do not want to interfere with such proceedings and hence, those writ petitions as well as the civil miscellaneous appeals are also dismissed;

(iv) consequently, connected miscellaneous petitions are closed; and

(v) however, in the circumstances, there is no order as to costs.

na/sasi/kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

1. The Competent Authority and
Commissioner of Land Administration,
Chennai

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2. The District Collector, Dindigul.

3. The Revenue Divisional Officer, Dindigul.

4. State Rep. By
The Deputy Superintending of Police,
Economic Offences Wing II,
Dindigul,

5. State of Tamil Nadu,
rep. By its Secretary,
Law Department, Chennai.

6. The Competent Authority,
District Revenue Officer,
Madurai.

7. State of Tamil Nadu,
rep. By its Secretary,
Home Department,
Fort St. George,Chennai 9.

8. The Comoetent Authority and
Spl Commissioner and Commissioner of
Land Acquistion, Chennai 5.

9. The Special Court Constituted for the offence
under T.N, Protection of Interest of Depositors
(In Financial establishments) Act,
High Court Campus, Chennai 104.

10. The Inspector of Police,
Central Cirme Branch,
O/o Commissioner of POlice,
EOW. Government Estate,
Chennai 2.

11. The Competent Authority and
District Revenue Officer,
Collectorate, Coimbatore

12. The Sub Inspector of Police,
E.O.W. II, Coimbatore.

13 The Principal Secretary to Government, Secretariate, Home [Courts IIA]
Department, Government of Tamil Nadu, Fort St. George, Chennai 9.

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14. The Inspector General of Police,
Registration, Economic Offences Wing II, Chennai 2.

15. The Competent Authority and District Revenue Officer, Chennai.

16 The Spl. Public Prosecutor,
Special Court of Tamil Nadu,
Protection of Interests of Deposits Act 1997 Chennai 104.

17. Deputy Superintendent of Police,
E.O.W II, Chennai 2.

18. The Competent Authority and
District Revenue Officer, Dindigul.

19. The Inspector of Police,
E.O.W.II, Dindigul. ..Respondents.

20. The Inspector of Police,
EOW.II, Tiruchi.

21. The Competent Authority,
District Revenue Officer,
Trichy.

22. The Inspector of Police,
EOW.II, Madurai.

23.. The Competent Authority and District Revenue Officer,
Kancheepuram District, Kancheepuram.

24. The Inspector of Police,
EOW, Kancheepuram.

25. The Competent Authority and District Revenue Officer,
Coimbatore.

26. The Inspector of Police,
EOW.II, Coimbatore.

27. The Secretary to the Government
of Tamil Nadu,
Home [Courts II A] Department,
Fort St. George,Chennai 9.

28. The Inspector of Police,
District Crime Branch,
[EOW.II], Theni.

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29. The Competent Authority and
District Revenue Officer,
Cuddalore.

30. The Inspector of Police,
EOW.II, Cuddalore.

31. The Inspector of Police,
EOW, Chennai.

32. The Inspector General of Police,
EOW, Chennai.

33. The District Revenue Officer,
Collector Office, Chennai.

34. The Deputy Superintendent of POlice,
EOW.II Chennai.

35. The District Revenue Officer,
Collector Office Vellore, Vellore.

36. The Deputy Superintendent of POlice,
EOW.II, Vellore, Vellore District.

37. The Inspector of Police,
District Crime Branch,
EOW.II, Theni District.

38.. The District Collector,
Salem

39. The Revenue Divisional Officer,
Salem District at Salem.

40. The Inspector of Police,
EOW.II, Salem

41. The Deputy Superintendent of POlice,
EOW II, Trichy.

42. The Spl Judge under the TNPID (INF.ES) Act 1997
City Civil Court Buildings Annexe,
Chennai 104 - C.C.No. 129 of 2004.

43. The Deputy Superintendent of POlice,
EOW II, Kancheepuram.

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44. The Inspector of Police,
EOW.II, Udhagai the Nilgiris District

45. The Competent Authority &
The District Revenue officer,
Kanyakumari District at Nagarcoil.

46. State rep by The Deputy Superintendent of
Police E.O.W II,
Kanyakumari District at Nagercoil.

47. The Special Court Constituted for the offence
under T.N, Protection of Interest of Depositors
(In Financial establishments) Act,
High Court Campus, Chennai 104.

48. The Inspector of Police, State of Tamilnadu,
EOW.II, Nagaercoil, Kanyakumari District at Nagarcoil 1.

49. The Competent Authority/Land Commissioner,
Collector Office, Vellore.

50.The Inspector of Police
E.O.W II,
Vellore.

51. The Authorised officers,
Revenue Divisional Officer,
Coimbatore.

52. The Deputy Superintendent of Police,
EOW.II. Coimbatore.

53. The Deputy Superintendent of Police,
EOW.II. Chennai.

54. The Competent Authority (Under TNPID Act)
District Revenue officer,
Erode District Erode.

55. The Inspector of Police,
EOW II, Erode.

56. The Inspector of Police,
Economic Office Wing,
Manjakuppam, Cuddalore District

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57. The Inpector of Police,
EOW.II, Karur.

58. The Competent Authority and
District Revenue officer,
Salem District, Salem.

59. The Superintenent of Police,
Salem District Salem.

60. The Inpector of Police,
EOW.II, Chennai 2.

61. The Inpector of Police,
EOW.II, Vellore District.

62. The District Superintendent
of Police, District Crime Branch,
Karur.

63. The Addl Director General of Police,
EOW.II, Admisalty House, Govt Estate,
Chennai 2.

64. The Addl Commissioner/ Competent Authority
(Cinema & Irrigation) Land Administration Department
Chepauk, Chennai 5.

65. The District Registrar,
Registration Department,
Pondicherry.

66. The Sub Registrar,
Oulgaret, Pondicherry.

67. The District Collector,
Kanyakumari District, Nagercoil.

68. The District Revenue Officer,
Coimbatore.

69. The Deputy Superintendent of Police,
EOW.II, Chengai East District,
Chennai 14.

70 The Deputy Superintendent of Police
EOW.II, Madurai.

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+ 3 ccs to Mr. A. Prabhakaran, Advocate, SR No.13228 & 13229, 13230

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